LYTTILTON TENURES

truelye translated into Englishe.

(?)

Anno domini M.D.L.V.I.

Fee symple.

Effate of inheritaunce.

Generall.
Especyal after poſſibilitye of yſſue.
Curteſye of Englande.
Dower.
Terme of lyfe.
Terme of others lyfe.

Fee tayle.

After the common lawe.

Franke tenement.

Franke tenement onely.

Poſſeſſyon of

After the cuſtome.

¶ Alſo note here, that Franke tenement after the cuſtome, may be deuyded in lyke maner as Franketenement by the common lawe is.

Terme of yeres.
Warde of lande.
To holde at will.

Reall.

Chatell.

Perſonall.

All goodes moueables.

Rec. July 24 1906

Cap.i.

The fyrst Chapiter.

TEnãt in fee syple is he which hath lãdes or tenemẽtes to hold to him & to his heires for euer. And is called in Latin feodum simplex, for feodum is called inheritance, & simplex is as much to say as lawful or pure, & so feodũ simplex is asmuch to sai as lawful or pure inheritance. For if a mã wil purchase landes or tenemẽtes in fee simple, it behoueth him to haue these wordes in his purchase, to haue and to hold to him and to his heyres. For these wordes, his heires, make the estate of inherytaunce. ¶ For yf any manne purchase lãdes by these wordes, to haue and to hold to him for euer, or by such wordes, to haue and to holde to hym and to his assignes for euer. In these.ii. cases he hath none estate but for terme of lyfe, for that, that he lacketh these wordes, his heires, the which wordes onely, maketh the estate of inheritaunce, in al feoffementes & grauntes. ¶ And if a mã purchase lãd in fee simple & die without issue, any that is his next cosyn collaterall of the hole blond, howe farre soeuer that he be frõ him in degre

What is fee symple.

An.20.H.6 Folio.38.

Cap. 4.

may inherite, and haue the same lād, as heyre to hym. But if there be father & son and the father hath a brother, whiche is vncle vnto the son, and the son purchaseth lande in fee simple, & dyeth without issue, his father liuing, ỹ vncle shal haue the lande, as heyre to the son, & not the father, yet ỹ father is more nere of bloud for that that there is a grouñde in the law that inheritāce may lineally descend, but not lineally ascend. Yet yf the son in such case dieth without issue, and his vncle entreth into the landes, as heire to the son, so as he ought by the law, & after ỹ vncle deceaseth without issue, the father liuig, thē shal the father haue the land, as heire vnto the vncle, and not as heyre vnto his son, for ỹ that he cōmeth vnto ỹ lande by collateral discent, & not by lineal ascēcio. ¶ And in such case where the son purchaseth lande in fee simple, & dieth without issue, they of his bloud of the fathers side shal inherite, as heyres vnto him, before any of the bloud of ỹ mothers side. But if he haue none heyre on the fathers side, then shal the land descende vnto his heires on the mothers syde, and this is the opinion of al the Iustices. M. 12. E. 4. fo. 14. But there it was holdē, if land descēd to a mā by the fathers syde, whiche dieth without issue, that his nexte heyre of the

Mariner.

fathers

fathers syde, shal inherite vnto him (that is to say) the next heire ꝑ is of the blonde of the father, of the grandfathers syde, & for defaut of such an heyre, they ꝑ be of ꝑ fathers blond of ꝑ parte of the mother, of the father, that is to say, the grādmother ought to inherite. And yf ther be no such heyre on the fathers syde, thē ꝑ lord shall haue the lande by eschete. And so it is if a man take a wyfe inherite in fee symple, which haue issue a son, and die, & the son entreth into the renementes, as son and heire to his mother & after dieth without issue, ꝑ heyres on ꝑ mothers syde, ought to inherite the tenementes, and not the heyres of the fathers syde: and if there be none heyres on the mothers side, thē the lord, of whō the same land is holde, shall haue the same land by eschete. In ꝑ same maner it is, yf landes descend vnto ꝑ son on the fathers syde, & entreth, & after dieth without issue, ꝑ lande shal descēd vnto ꝑ heyres on the fathers syde, & not to ꝑ heyres on ꝑ mothers syde. And if there be none heires on ꝑ fathers side, thē ꝑ lorde of whō the lād is holdē, shal haue ꝑ same lad by eschete. And so ye may se the diuersitie, where ꝑ son purchaseth landes or tenemētes i fee simple, & where he cōmeth into those landes or tenemētes, by discēt on the fathers syde, or on ꝑ mothers side.

Lay. i.

Diuersitie.

g. i.

¶ Also if there be thre bretherne, and the myddell brother purchaseth lande in fee simple, and dyeth without issue, the elder brother shall haue the land by discēt

the elder son more worthy blonde.

and not the yonger.

¶ And also yf there be thre brethren, and the yongest brother purchaseth lād in fe simple, and dyeth without issue, the elder brother shal haue the land by discet, and not the myddle brother, for that, that the

Maxime.

elder brother is more worthy of blonde.

¶ And it is to be vnderstand, that no mā shal haue land in fee simple by discēt, as heire vnto any mā, but it be be his heire of the hole blond. ¶ For if a mā haue issue ii. sonnes by two venters, & the elder purchaseth lande in fee simple, & dieth without issue, ỹ yonger brother shal not haue the lande, but the vncle of the elder brother, or some other his nygh coulin shal haue it, for that, that the yonger brother is but of ỹ halfe blond to ỹ elder brother.

¶ And if a mā haue issue a sōne & doughter by one venter, and a son by an other venter, and the son by the fyrst vēter purchaseth lande in fee simple, & dyeth without issue, the syster shal haue the land by discent, as heyre vnto her brother, & not the yongest brother, for that, ỹ the syster is of the hole blonde to her elder brother

¶ And also where a man is seised of lan-

des

des in fee simple, and hathe issue a son & a doughter by one venter, & a son by an other vēter and dyeth, & the elder son entreth & dieth without issue, the doughter shal haue the land, & not the yonger sone and yet is the yonger son heyre vnto his father, but not to his brother. But yf the elder son enter not into the lād after the death of his father, but dieth before anye entre made by hym, then the yonger brother may entre & haue the land as heire vnto his father. But where the elder son in the case aforesaid, entreth after ỳ death of his father, and hath possession, the the syster shal haue the lande. Quia possessio terrarū de feodo simplici, facit ioiorē esse heredē. For the possessiō of the brother in fee simple maketh the syster to be heyre. Cap. 2.

¶ But if there be. ii. brethren by dyuers venters, & the elder is seased of the lande in fee simple, & dieth without issue, and his vncle entreth as nerte heyre vnto the elder brother, whiche also dyeth without issue, thē the yonger brother may haue ỳ lande, as heyre vnto his vncle, bicause he is of the hole bloud to hym, though he be but of halfe bloud vnto his elder brother. Maxime. In. 40. E. 3. Folio. 9. by Fencot.

¶ And ỳ same kynge. anno. 2. Folio. 7.

¶ And it is to be vnderstād, ỳ this worde inheritance, is not only vnderstād wher a man hath landes or tenemētes by dissēt of heritage, but also euery fee simple

What is inheritaunce.

¶ Also if there be thre bretherne, and the myddell brother purchaseth lande in fee simple, and dyeth without issue, the elder brother shall haue the land by discēt and not the yonger.

The elder son more worthy blonde.

¶ And also yf there be thre brethren, and the yongest brother purchaseth lād in fe simple, and dyeth without issue, the elder brother shal haue the land by discet, and not the myddle brother, for that, that the elder brother is more worthy of blonde.

Parisme.

¶ And it is to be vnderstand, that no mā shal haue land in fee simple by discēt, as heire vnto any mā, but if he be his heire of the hole blond. For if a mā haue issue ii. sonnes by two venters, & the elder purchaseth lande in fee simple, & dieth without issue, ỳ yonger brother shal not haue the lande, but the vncle of the elder brother, or some other his nygh coulin shal haue it, for that, that the yonger is but of ỳ halfe blond to ỳ elder brother.

¶ And if a mā haue issue a dōne & doughter by one venter, and a son by an other venter, and the son by the fyrst vēter purchaseth lande in fee simple, & dyeth without issue, the syster shal haue the land by discent, as heyre vnto her brother, & not the yongest brother, for that, ỳ the syster is of the hole blonde to her elder brother.

¶ And also where a man is seised of lan-

des

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¶ But if there be. ii. brethren by dyuers venters, & the elder is sealed of the lande in fee simple, & dieth without issue, and his vncle entreth as nexte heyre vnto the elder brother, whiche also dyeth without issue, thē the yonger brother may haue ỳ lande, as heyre vnto his vncle, bicause he is of the hole bloud to hym, though he be but of halfe bloud vnto his elder brother. Maxime. In. 40. E. 3. Folio. 9. by Fencot. ¶ And ỳ same kynge. anno. 24. Folio. 7.

¶ And it is to be vnderstād, ỳ this worde inheritance, is not only vnderstād wher a man hath landes or tenemētes by dissēt of heritage, but also euery fee simple, What is inheritaunce.

or fee tayle ỳ a mā hathe by his purchase
may be said inheritaūce, for that that his
heyres maye inherite him. For a wryte
of right that a man bringeth of lād, that
was of his owne purchase, the writ shal
say. Quā clamat esse ius et hereditatem
suam, that is to sai, which he claimeth to
be his right, & his inheritaunce. And so it
shalbe sayd in diuers other writs, which
a man or a womā bringeth of his owne
purchase, as it appeareth by ỳ regester.
¶ And of suche thinges as a man maye
haue a manuel occupaciō, possessiō, or re
ceite, as of landes, tenementes, rentes, &
such other, a man shal say in his pleding
and in way of barre, ỳ one such was sea
sed in his demesnē, as of fee. But of such
thinges, ỳ lie not in such manuel occupa
cion. &c. as of auowsō of a churche & such
lyke, he shal say, that he was seased as of
fee, & not i his demesne as of fee. And in
latin it is in one case. Quod talis fuit sei
situs in dominico suo vt de feodo, that is
to say, that such one was seased in his de
mesne, as of fee, & in ỳ other case. Quod
talis fuit seisitus. &c. vt de feodo, ỳ is to
say, that one suche was seased as of fee.

¶ And note well, that a man maye not
haue a moze large ne greater estate of in
heritaunce, then fee symple.

¶ Also purchase is called the possessiō of
landes

pp. i.
he forme of a
itte.

The most great
heritaunce.
Purchase.

landes or tenemētes that a man hath by his dede, or by his agremēt, vnto which possession he cōmeth not by discēt of any of his auncestors, or of his coulyns, but by his owne dede. Cap. 2.

¶ Tenaunt in fee tayle. Cap. ii.

TEnant in fee taile is by force of the statute of Westminster secōd. Ca. i. for at the commō law before the sayde statute, all inherytaunce were fee simple, for al the gyftes, which ben specyfyed within the same statute, were fee simple condicionally, as it apeareth by ỹ rehersal of the same statute. And now by the same statute, tenant in the tayle is in two maners, that is to say, tenāt in taile general, and tenaunt in tayle special. Diuision.

¶ Tenaunte in tayle generall, is where landes or tenementes be gyuen to a mā and to his heires of his body begottē. In this case it is said general taile, for that, that whatsoeuer womā that such tenant taketh vnto wife, if he haue many wiues and by eche of them hath issue, yet euery one of these issues by possibilite may inherite the tenemētes by force of the sayd gyft, bycause that euery suche issue is of his body engendred. General tayle.

¶ In ỹ same maner it is, where lādes & tenemētes be gyuen to a womā, & to the heires of her body, although she haue di

Lay.2.

ners husbādes, yet the issue that she may haue by ech husbād, may īherite as issue in the taile bi force of ỳ said gift. And these fore such giftes be called generall tayle.

Especiall tayle.

¶ Tenaunt in tayle especial is where lādes and tenementes be gyuen to a mā & to his wyfe, and to the heires of their bodies begotten. In such case none may inherite, by force of the sayde gyfte, but those that be engendred betwene theym two. And it is called a specyal tayle, for ỳ yf the wyfe dye, and he taketh another wife, & hath issue, the issue of the seconde wyfe shal neuer inherite by force of such gyfte. Nor also the issue of the seconde husbande, yf the fyrst husbande dye.

Frankemariage maye bee made as wel after the espousels as a fore, li.4. f.5.

¶ In the same maner it is, where lādes and tenemētes be giuē by a mā vnto another with a wife, whiche is ỳ doughter or cosin to the giuer, in frakemaryage, which gyfte hath inherytaunce by these wordes, frankemariage, vnto it annered although that they be not expressely sayd or reherced in the gyft: that is for to say, that these donees shall haue these landes or tenementes to thē and to theyr heyres betwene them two engendred, and this is sayd especial tayle, for that the issue of ỳ secōd wife may not inherite. &c. vt sup.

Dyuers fee taile

¶ And note wel ỳ this worde tailiare, is to say, to set vnto some certayntie, or els

limitte

mitte vnto some certayne inheritaūce. Cap. 2.
and for that, that it is lymitted and set in certayne what issue shal inherite by force of such giftes, and how long that the inheritaūce shall endure, therefore it is called in latin. Feodum talliatum. i. hereditas in quadām certitudine limitata. For if tenant in generall tayle die without issue, the donour or his heyres shal inherit as theyr reuercion. In the same wyse is of the tenaunt in the tayle speciall. &c.

By what seruices the tenātes in taile shall holde of theyr donour.

For in euery gyft in taile without more sayeng, the reuersion of fee simple is in the donoure, and the donees, and theyr heyres, shall do to the donoure and to his heyres, such seruices as the donour doth vnto his lord next aboue him. Except the donees in frākmariage, which shal hold quietly frō euerye maner of seruice (but yf it be for fealtie) vntyl the fourth degree be past. And after that the fourth degree be passe, the issue in the. v. degree, and so forth the other issues after him shal hold of the donour and of his heyres, as they holde ouer, as is afore sayde.

Howe the degrees in frankmaryage shal be accompted.

And these degrees in frākmariage shal be accōpted in such maner, that is to say, frō the donour to ỳ donees in frankmariage the fyrst degree, for ỳ, that the wife ỳ is one of ỳ donees, ought to be ỳ doughter fyrst, or other cousin to the donour, & frō

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fro the donees vnto theyr issue, shalbe
countpted the seconde degree. And fro
theyr issue vnto theyr issue, the thyrd de
gree and so forth. &c.

¶ And the cause is, for that after euery
suche gifte, the issues that come of the d
nour, and the issues that come of the do
nees, after the. iiii. degre past of both pa
ties, in such forme to be accompted, may
betwyxt them by the lawe of holy churc
entermary. And that the donee in frank
marriage, shall be the fyrste degree of the
foure degrees, a man may se in a plee by
pon a writ of ryght of warde, where the
plaintife pleaded, that his ayle or grande
father was seased of certayne landes. &c.
And that he helde of an other by knyghte
ternice. &c. whiche gaue the lande vnto
one Rase Holland, with his syster, in
frãke marriage. &c. Al these tailes before
sayde, be specified in the sayd statute of
Westminster the seconde.

Cap.31.E.3.

equitie of the
atute.

¶ Also there bee dyuers other estates in
the tayle, whiche be not specyfyed by ex
pzelle wordes in ỳ sayd estatute, but they
be takẽ by the equitie of the sayd statute.
As if lãdes be giuẽ vnto a man, & to his
heyres males of his body engendred, in
such case his heyre male shal iherite, & ỳ
issue female shal neuer iherite yet, & these
other tailes aforesayd, it is otherwise.

¶ In the same maner it is, yt landes be gyuen to a man, & to his heires females of his body ingendred, in this case his issue female shal inherite by force & forme of the sayd gyfte, and not the issue male, for that, that in suche cases, where the gyfte is made in tayle, who ought to inherite, and who not, the wyll of the donour shalbe obserued. Lay.2. The wyl of the donour in all things shalbe obserued.

¶ And in case where landes or tenemen tes be gyuen to a man, and to his heyres males issuinge of his bodye, and he hath issue two sones, and deceaseth, the elder son entreth as heyre male, & hathe issue a doughter, and deceasethe, his brother shal haue the lād, and not the doughter, for that that the brother is heyre male. But in these other tayles which bene specified in the sayd estatute, the doughter shall inherite before the brother.

¶ Also yt land be gyuen vnto a mā, and to his heyres males of his bodye engendred, & he hath issue a doughter, whiche hath issue a son, and deceaseth, and after that the donee deseaseth. In this case the son of the doughter shall not inherite by force of the tayle, for that, ý who so euer shal inherite by force of a gyfte in ý taile made vnto ý heyres males, behoueth to cōuey his discēt allway by the heyresmales. But in such case ý donour shal enter for Taile vnto the heyres males. 19.18.E.3 fol.44.

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for that, that the donee is deade without issue male in the lawe. In so muche that the issue of the doughter mai not conuey to hym the dyscent of heyze male.

The dyscent of the heyzes males.

¶ And in the same maner it is where landes be giuē to a mā and his wife, & to his heires males of their. ii. bodies ingēdzed.

When the husbande hathe estate in taile especial, & wyfe.

¶ Also yf tenementes be gyuē to a man and his wife, and to the heires of the bodye of the man ingendzed, in this case the husband hath estate in the general taile and the wyfe but estate for terme of life.

¶ Also if landes be giuen to the husband and to the wyfe, and to the heires of the husband, which he ingendzeth of the body of the wife, In this case the husbande hath estate in the specyal tayle, and the wyfe but for terme of lyfe.

¶ And yf the gyfte be made to the husbande, and to the wyfe, and to the heires of the wyfe of her bodye by the husband ingendzed, then the wyfe hathe estate in the specyall tayle, and the husbande but for terme of lyfe.

¶ But if landes be giuen to the husband and the wife, & to the heires that the husband ingendzeth on the body of the wife. In this case both haue estate in the taile, for that this wozde heires, is not lympted no mozе to the one then to the other.

In. 12. H. 4. Fol. 10. Tayle alterzed. &c.

¶ Also if landes be giuen to a mā & his heyzes

heires that he engendreth on the body of his wife, in this case the husband hath estate in ỹ taile special, & the wife nothing. Cap. 2.

¶ Also yf a man haue yssue a son and deceaseth, and the lande is giuē to the son and to the heyres of the bodye of his father ingendred, this is a good tayle, and yet the father was deade at the tyme of the gyfte.

¶ And manye other estates in the tayle ther be by the equitie of the said estatute that be not specyfyed here. But yf a man giue landes or tenemētes to another, to haue and to holde, to him & to his heires males or to his heires females, he to whō suche gyfte is made, hath fee symple, for that, that it is not lymytted by the gyfte, of what body the issue male or semal shal be, and so it may not in any thinge be taken by the equytie of the sayde estatute, and therefore he hath fee symple. Fee symple & dyscontinue.

¶ Tenaunt in tayle after possibilitye of yssue extincte. Capi. iii.

TEnant in the taile after possibilitie of the issue extinct, is where as landes or tenements be giuen vnto a mā, and his wife in special taile, if one of thē decesse wout issue, he ỹ surmyneth is tenāt in the taile after possibilitie of issue extinct. And if they haue issue, duringe ỹ lyfe of the issue, he ỹ surmyneth shall not

be

be layd tenant in the tayle after possibi
tie of issue extinct. Yet if the issue dece
without issue, so that there be none alie
that may inherit by force of the taile, th
he that surviueth of the donees, is ten
i the tayl after possibility of issue extinct
¶ Also if landes be gyuen to a man, & t
his heires, that he engendred on the bod
of his wyfe, in this case the wyfe hath
nought in the tenemētes but the husbā
is sealed as donee i the special tayle. An
in this case yt the wyfe decease without
issue of her body engēdred bi her husbād
then the husbande is tenant in the tayl
after possibilitie of issue extincte.

Maxime. ¶ And note wel, ỳ none maye be tenant
in the tayle after possibilyte of issue ex
tincte, but one of the donees, or the done
in special tayle, for the donee in generall
tayle maye neuer be layd tenaunt in the
tayle after possibilitye of issue extyncte,
for that that alway durynge his lyfe, he
may by possibylitie haue issue that maye
inheryte by force of the same tayle. And
so in the same maner the issue ỳ is heyre
vnto the donees in a special tayle, maye
not be layde tenaunt in tayle after possi
bylyte. &c. causa qua supra.

li. 10. H. folio. 1. ¶ Also tenant in taile after possibilite of
issue extincte, shall neuer be punished of
wast for ỳ iheritance ỳ ones was i him.

But he

in the reuertion may entre, if he doth Cap.4.
ene in fee. An.4 5.E.3. Folio.22.

¶ Tenant by the curtesye of Englande. Capt, iiii.

TEnant by the curtesy of England is, wher a man taketh a wyte seased in fee simple, or i fee taile general, or sealed as heire i the taile special, & hath issue by ẏ same wife male or femal the issue after being deade or a liue if the wife decease, the husband shall holde the land during his life, by the lawe of England. And this is called tenant by the curtesy of Englād, for that, that it is not vsed in none other realme, but only i Englād. And some say, that it shal not be said tenant by the curtesy, but if that ẏ childe that he hath by his wyfe, be harde crye: for by the crye is the proofe, that the child that he had by his wyfe, was borne.

¶ The tenaunt in dower cap. v.

TEnaūt in dower is, where a mā is sealed of certeine lādes or tenemētes in fee simple, or i fee taile general, or as heyre in ẏ taile special, & taketh a wyfe, & decesseth, the wife after the decesse of her husband, shalbe endowed of the thyrde part of such landes, or tenemētes that were her husbandes in any time during the couerture, to haue & to holde to the same wife in seueralte, by metes &

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Of what age the wyfe shalbe endowed and howe.
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Folio.3. by Hauke and Lokyn.

boudes for terme of her life, whether he haue by her husbande issue or none, & what age the wife be, so that she passe age of.ix.yere at ỳ time of her husbãdes death, or els she shall not be endowed.

¶And note wel, that by the cõmon law the wife shal not haue for her dower but the third part of the tenementes, whych were her husbandes, duringe the espousselles. But by custome of some coũtrey she shal haue the halfe and by custome of some towne, or boroughe, she shall haue the whole: And in all these cases, she shal be sayd tenaunt in Dower.

¶Also there is two other maner of Dowers, that is to saye, dower called dowement at the churche doze, and dower called dowment by the fathers assent.

Dower at the church doze,

Dowment at the churche doze, is where a man of ful age is seased in fee symple, which shal be wedded vnto a wife, when he commeth vnto the churche dooze to be maried, and there after affiaunce & truth made betwene theym, he endowethe his wife of his hole lande, or of the halfe, or lesse parcel, and there openly declarethe the quantitye and the certeyntye of his lande, that she shal haue for her dower.

In this case the wyfe after the deathe of her husband, shal enter into the sayd quantitie of land, of which her husband endowed

ed her wout the assignemēt of any mā

Dowement by the fathers assente, is where the father is seased of tenemetes in fee, and his son and heyr apparaunt, when he is wedded, endoweth his wyfe at the church doze of parcel of the landes or tenementes of his fathers, by thassent of his father, and assigneth the quantitie of the parcelles: In this case after the deathe of the son the wife shall entre in the same parcell without the assignemēt of any other. But it hath bene sayd in this case, that it behouethe the wife to haue a dede of the father, proving his assent and consent of such endowment. And if after the death of the husband she entre and agree vnto any suche dower of the sayd two dowers at the church doze, then she is cōcluded to claime any other dower by the common law of any lādes or tenementes, which were of her sayde husbande. But if she wil, she may refuse such dower at the church doze, and then she may be endowed after ỳ course of the comon lawe. And note well that no wyfe shall be endowed of the fathers assēt in ỳ same afozesayd, saue where her husbāde the son and heyze apparaunt to his father. Inquere in these two cases of indowment at the church doze, if the wife at ỳ time of the deathe of her husbande, passe

Dower by the fathers assent.

M.40, E.3. Folio.45.

M.12.E.4. Folio.3' Whiche do agree vnto the same.

A rule.

Inquere.

Cap.f.

not the age of.xr.yeres,yf he ſhall hau
ſuche dower or no.

Where as the wyfe may entre in her dower without aſſignemente,and where not,

¶ And note well,that in all caſes wher
the certeyntye appereth,what landes o
tenementes the wife ſhal haue for her d
wer,the wyfe may enter after the deat
of her huſbande,without aſſignemēt o
any other.But where the certeyntye ap
pereth not,as to be endowed of the thir
part,to haue a ſeueralty,or to be endo
wed of the halfe,after the cuſtom to hol
in ſeueraltie.In ſuche caſes it behoueth
ỳ her dower be vnto her aſſigned,afte
the death of her huſbande,becauſe it i
not limitted before the aſſignemet wha
parte of landes,or tenementes,ſhe ſha
haue for her dower.But if there be tw
ioynetenantes of certayne landes in fe
and the one alieneth that,that to him pe
teyneth and belongeth to an other in fe
which taketh a wyfe,and after dieth.I
th'case the wife for her dower,ſhal hau
the thyrde parte of the halfe that her hu
band purchaſed to holde in cōmune,an
occupy in cōmune,as her part amoūte
with the heire of her huſbande,and wit
the other ioyntenant,which alienedn
for that in ſuche caſe her dower may n
be aſſygned by metes and boundes.

In.40.E.3. fo,23.by Fencot,

The wyfe ſhal not be,

¶ And it is to be vnderſtande,that t
wyfe ſhal not be endowed of landes or
nemen

nementes, that her husband iointly held with an other at the time of his deathe. But where he holdeth in common, it is otherwise, as in the next case aforsayde. ¶ And it is to wit, that if the tenaunt in tayle endow his wife at the church dore as it is aforsayde, that shal serue for litle or nought to the wife, for that, ỹ after the deathe of her husband, the issue i the tayle may enter vppon the possessyon of the wife, and so may ye in the reuertyon if there be none issue in the tayle alyue.

Cap.5. endowed of the ioynt. estate of her husbande. In.14. H,4. fol.14.

¶ Also if a man seased in fee simple beynge within age, endowe his wife at the churche dore, and dieth, and the wife entreth. In this case the heyre of the husbande may put her out. But it is other wise as it semeth wher the father is seased in fee, and the sonne within age endowe his wife of his fathers assent, the father then beinge of full age.

where assygnement of dower shal be voyd by reason of within age.

¶ Also there is an other Dower whiche is called Dowment de la plus beale. And that is, as in suche case that a man is seased of foretye acres of lande, and he holdeth twenty of the sayde foretye acres of one man by knightes seruice, and the other twentye acres of an other in Doage, and taketh a wife, and hath issue a son, and dieth, his son being within the age of.xiiii. yeres, and the lord of whom

Power de la plus beale.

Capi. 5.

the lande is holden by knyghtes seruyce entreth into the twentye acres of lande holden of him, and then hathe and occupieth as wardeyn in chiualry duringe the childes nonage, and the chyldes mother entreth in the remnaunt, and it occupieth as gardeyne or wardeyne in socage. If in this case the wife bryngе a writ of Dower agaynst the wardeyn in Chiualry to be endowed of the tenementes holden by knyghtes seruyce, in the kynges court or in any other court, the wardeyn in chiualrye may pleade in such case all the matter, and shewe how the wife is wardeyn in socage, as it is aforesayd, & pray that it maye be adiudged by the courte, the wife endow her selfe of the moste fayre called plus beale, of the tenementes that she hath as wardeyn in socage, after the value of the third part that the claymeth to haue of the tenementes holden in chiualry by her writte of Dower.

And if the wife may not gaynsay it, then the iudgement shall be made, that ỳ wardeyn in chiualrye shall holde the lande holden of him, during the nonage of the childe quiete from the woman. &c.

¶ And after such iudgement geuen, the wife maye take her neyghbours, and in their presence endowe her selfe by mets and boũdes of ỳ fayrest part of these tenements

mētes ỳ ſhe hath as wardeyne i ſocage, to the value of the third parte of the landes, that the wardeine in chiualry hath, and thoſe to haue & to holde for terme of her life. And ſuch dower is called dower of the tayreſt part, or de plus beale. Cap.5.

¶ With this agreeth. Ỳ.45.E.3.fol. 4.

¶ But there it was ſayde, that after the time that the heyre came to his full age, the wife ſhal haue a new action of dowrye agaynſte the heyre, to be endowed of the thirde parte of al that her huſbande died ſealed of.

¶ And note wel that ſuch dowmēt maye not be, but wher the iudgement is giuē in ỳ kiges court, or in ſome other court. And the wife may do thꝰ for the ſaluaciō of the ſtate of the wardē in chiualrye during the nonage of the child. And ſo may ye ſe.v. maner of dowers, that is to ſay, dowment by the cōmon lawe, dower by cuſtom, dower at the church doze, dower of the fathers aſſent, & dower of the moſt fayre: ¶ And remēber that in euery caſe wher a man taketh a wife ſeaſed of ſuch eſtate of tenementes. &c. ſo ỳ the iſſue ỳ he hath by his wife maye by poſſibilitye inherit ỳ ſame tenemētes of ſuche eſtate that the wife hath, as heyre to the wyfe. In ſuche caſe after the wyfe is deade he ſhall haue the ſame tenementes, by

Fyue maner of dowers.

Tenaunt by the curteſy.

Cap. 5.

the curtesy of englād and otherwise not.

Maxime.

¶ And also in euery case, where ỳ wyfe taketh an husbād sealed of such estate of tenementes. &c. so that by possibilitie it may hap the wyfe to haue some issue by her husbād, and that the same issue may by possibilitye inherite the same testamentes of such estate that the husbād had, as heire to his father, of such tenemētes she shall haue her dower, and otherwise not. For if the tenementes be giuen to a mā and to the heyres that he getteth on his wiues body, in suche case ỳ wife hath nothing in ỳ tenemētes, & the husbād hath estate but as donee in special tayl, yet if the husbād die wout issue, the same wife shalbe endowed of the same tenementes for that the issue, that she by possibilitie myght haue had by the same husbande, maye inherite the same tenemētes. But if the wife decease, the husbande liuinge and after he taketh another wife, the seconde wife shall not be endowed in this case, causa qua supra.

An. 12. H. 4. fol. 1.

Nota.

¶ A man was sealed of certaine lādes & toke a wife, & after aliened the same landes with warantie, and after the feoffor & feoffee died, & the wife of the feoffoure bringeth an action of dower against the issue of the feoffee & he vouched the heir of the feoffour, & ouringe the voucher &

not

not termined, the wife of the feoffee, brigeth an action of dower againſt the heir of the feoffee, and demaundeth the third parte of al that her husbande was ſeiſed of, and woulde not demaunde the thirde parte of thoſe two parties ỳ her husband was ſeiſed of, it was iudged, ỳ ſhe ſhuld haue no iudgement, vntill the time that the other plee were determined. Cap.5.

☞ And alſo note that Mauaſour ſaithe that if a man be ſeiſed of lãdes, and committeth felonye, and after alieneth, and after is attaynted, the wife ſhall haue a good action of Dower againſte the feoffee. But if it be eſcheted vnto the kynge or vnto the lorde, ſhe ſhal haue no writte of Dower. And ſo ſe the diuerſitie, and enquire the lawe.

¶ Tenant for terme of life. Cap.vi.

¶ Tenaũt for terme of life is wher a man letteth lãdes or tenemẽtes to an other for terme of life of the leſſe, or for terme of life of an other mã. In ſuch caſe the leſſee is tenant for terme of life. But by commen language, he that holdeth for terme of his owne life, is called tenaũt for terme of life & he ỳ holdeth for terme of an other mans life, is called tenaunt for terme of an others lyfe. ¶ And it is to be vnderſtanded, ỳ ther is

Cap.6.

feoffour and feoffee, donoure and donee lessour and lessee. The feoffour is properly where a mā inseoffeth an other in any landes or tenementes in fee simple he ỹ maketh the feoffemēt is called feoffour, and he vnto whom ỹ feoffemēt is made, is called feoffee. And the donour is properly, where a man giueth certayne landes or tenementes to an other in the tayl, he that maketh the gifte is called donour, and he to whom the gift is made, is called donee. And the lessour is properlye wher a man letteth to an other certayne landes or tenemētes for terme of life, for terme of yeres, or to holde at wil, he that maketh the lease, is called lessoure, and he to whō ỹ lease is made, is called lessee And euery one that hath estate in landes or tenemētes for terme of his owne life, or for terme of an other mans life is called tenaunt of frehold. And none other of lesse estate may haue frehold but they of greater estate may haue frehold. For tenaunt in fee simple hath frehold, and tenaunt in tayle hath frehold.

¶ Tenaunt for terme of yeres.

Ca.vii.

TEnaūt for terme of yeres, is wher a mā letteth lādes or tenemētes to an other, for term of certain yeres after the nōber of yeres, that is accorded

betwene

betweene the lessoure and the lessee, and whē the lessee entreth by force of the lese, thē is he tenaunt for terme of yeres, and if the lessour in such case reserue to hym a yereli rent vpō such lease he may chose for to distreyne for the rente in the tenementes letten, or els he may take an accion of dette for the arrerages agaynste the lessee. But in such case it behoueth, ỳ the lessour be seased of ỳ same tenemētes at the time of his lease, for it is a good plee for the lessee to saye, that the leissour had nothing in the tenementes at ỳ time of the lease, excepte the lease be made by dede indented, in whiche case then suche plee lieth not for the lessee to pleade. Lay.7.

¶ And it is to be vnderstād that i a lease for terme of yeres, by dede or wout dede it nedeth no liuery of seisi to be made to ỳ lesse, but he may ēter whēsoeuer he will by force of the same lease. But of feoffementes made in the countreys or giftes in the tayle or leasses for terme of life. In such cases where freholde shal passe, yf it be by dede or without dede, it behoueth to have lyuery of seisin. &c. where liuery of seisin shal be quired, and where not.

But if a man lette landes or tenementes by dede or without dede for terme of yeres, ỳ remainder ouer to an other for terme of life or in ỳ tayle or in fee, thē in such case, it behoueth ỳ the lessour make

lyuery

Cap.7.

lyuere of seisyn to the lessee for terme of yeres, or els ther shall nothinge passe to them in the remainder, though the lessee enter in ỳ tenemẽtes. And if ỳ termoure in such case entre before any such liuery of seisin made vnto him, then is the freehold and the reuercio in the lessour. But if he make any liuere of seisin vnto the lessee, then is the freehold wt the fee to thẽ in the remainder, after the fourme of ỳ graũt and wil of the lessour. And if any man shal make a feoffemẽt by dede or wt out dede of lãdes or, tenementes that he hath in many townes in one shire, if the lyuere of seisin be made in one parcel of the tenementes in one towne in ỳ name of all it suffiseth for al the other landes or tenementes comprehẽded in the same feoffemente in all other townes in the same shire. But if a mã make a deede of feoffement of landes or tenemẽtes in diuers shires, there it behoueth hi to haue in euerye shire a liuery of seisin. And in such case a man shall haue by the graũt of an other fee simple, fee tayl or freehold without liuery of seisin.

Exchaunge.

¶ As if two men be, and eche of them is seased of a quantitie of land within one shire & the one graunteth his lãd to the other in eschaũge for the lãd ỳ the other hath, & in the same maner ỳ other graũteth

eth his landes to the fyrst grauntour in exchaūge for the lāde that the fyrst graūtour hath. In this case eche may entre in the others landes so taken in exchaunge without any liuery of seysin. And such exchaūge made by wordes of tenementes within the same shyre, without any writing is good ynoughe. And yf the landes or tenemētes be in diuers shires, that is to say, yf that the one haue in one shyre, and the other hath in another shire, there it behoueth to haue a dede indēted made betwene them, of suche exchaunge. Cap. 7.

¶ And note, that in exchaunge it behoueth, that the estates that bothe partyes haue in the lādes so exchaūged, be egall. For if the one wylleth & graūteth, that the other shal haue his lād in the taile for the land that he hath of the graunt of the other in fee simple though that the other is agreed to that, yet thy exchaūge is but voyde, for that the estates be not euen. In exchaunge the estates ought to be egall,

¶ In ỹ same maner it is, wher it is grāted, and agreed betwene thē, that ỹ one shal haue in the one land fee taile, & the other shal haue i the other lād but terme of life. Or if one shal haue in the one lād fee tayle general, & the other in the other land fee tayle specyal. So alway it behoueth, that in exchaūge the estates of bothe parties be egall, that is to say, if that one

haue

Cap. 7.

haue fee simple in that one lande, then the other shall haue suche estate in the other lād, and if the one hath fee taile in the one land, then the other shall haue likewyse in the other lande, Et sic de aliis statib⁹.

In. 9. E. 4. folio. 41.

¶ But it is nothinge to charge of the euen value of the landes, for though that the land of that one is much more in value then the land of the other, this is nothing to purpose, so that the estate made by the exchaunge be euen, and soo in exchaunge, be two grauntes, for euery part grauntethe his lande to the other in exchaunge, and in eche of theyr grauntes mencion shalbe made of the exchaunge.

Of possession and seysin.

¶ And if a man let lande to an other for terme of yeres, though the lessour die before the lessee entre into the tenementes, yet may he enter into the tenementes after the deathe of the lessour, for that, that the lessee by force of the lease hath righte incontinente to haue the tenementes after the fourme of the lease

¶ But if a man make a dede of feoffemēt vnto an other, and a letter of attourney to a mā, to delyuer to him seisin by force of the same dede, yet if the liuery of seisin be not made in the life of him that made the dede it auaileth not, for that, that the other hath no maner of right to haue the tenementes after the purpose of the dede

before

ebore the liuerie of seisin. &c. And if no liuery be made. then after ỹ deathe of him that made the dede, the right of suche tenementes, is contynente in his heyre, or in some other.

Waste agaynst tenaunt for terme of yeres. An.4.H.8. folio 13. An.4.E.4. folio.19.

¶ Also if tenementes be let to a man for yarme of halfe a yeare, or for terme of a quarter of a yeare. &c. In such case yt the lessee make wast, the lessour shal haue a waynst him a writ of waste, and the wryt shall saye Quod tenet ad terminũ ānox. But he shal haue a special declaracio vpõ ỹ truth of this matter, & the plee shall not abate the writ, for that, that he maye haue no other writ vpon the matter.

An.7.H.7. Folio.1.

¶ Tenaunt at will. Cap.viii.

TEnaunt at wil, is where lādes or tenementes be letten by a mā vnto an other to haue and to hold to him, at the will of the lessour, by force of which lease, the lessee is in possession, In such case the lessee is called, tenaunte at will, for that he hath no certeyne sure estate: for the lessour may put him out, at what time it pleaseth him. Yet if ỹ lessee sowe the lande and the lessoure after the sowynge, and before that his graynes be ripe, putteth him out, yet shall the lessee haue his graynes, and shall haue free egresse and regresse, to repe and carye his graines for ỹ he wiste not at what time his

With this agreeth. An.37.H.6. folio.38.

Cap. 8.

his lessour would entre vpō him. Othe
wise it is, yf tenaunt for terme of yere
before the ende of his terme, fowethe t
land, and the terme is ended, before th
his corne be rype. In this case the lesso
or he in the reuercyon, shal haue the gr
nes, for that the termour knew well t
certeyntye of his terme, and when h
terme shulde be ended.

¶ Also if an house be let to a man to ho
at wil, by force of which the lessee ētre
into the house, within whiche house
bryngeth his housholde stuffe, and aft
the lessour puttethe him out, yet shall
haue free entre, egresse and regresse in
same house, by reasonable tyme to car
his goodes and housholde stuffe.

¶ And yf a man sealed of an house in f
symple, fee tayle, or for terme of lyfe, t
whiche hath certeyne goodes within t
same house, and maketh his executour
& deceaseth, whosoeuer after his deat
hath the house, yet shall his executour
haue free entre, egresse & regresse to c
ry out of the house the goodes of their
statour by a reasonable tyme.

¶ Also if a mā make a dede of feoffem
vnto an other of certayne land, and de
uereth to him the dede but no lyuerye
seysin, In this case he to whom the de
is made may entre into the lāde, & h

occupie it at the will of him that made
the dede, for that, that it is proued by the
wordes of the dede, that it is his wyll that
the other shall haue the lande. But he
that made the dede may put hi out whē
he will.

Also if an house be let to holde at wyll
the lessee is not holden to sustayne or re-
payre the house, as tenaunt for terme of
yeres, is holden to do. But if the lessee at
will make voluntary wast, as in pulling
downe of houses, or in cutting or felling
of trees. It is sayde, that the lessour shall
haue for that agaynste hym an action of
trespas. As if I deliuer to a mā my shepe
to dong or marle his land, or mine ors to
eare his land, and he sleeth my beastes. I
may wel haue an actiō of trespas against
him, notwithstandinge the deliuerye.

Also if the lessour vppon suche lease at
will, reserue vnto him a yerely rente, he
may distreyne for the rent behinde, or to
haue for that an actiō of det at his owne
choyse. H. 6. R. 1. in reple.

Wast made by tenaunt at wil how he shal be punished, Loke H. 12. E. 4. folio 8.

In action of Trespasse.

¶ Tenaunte by copie of court Rolle. Cap. ix.

TEnant by copy of court rolle, is as
if a man, be seased of a manor with
in whiche manoure there is a cu-
stome, and hath bene vsed of tyme out of

Capi. 9.

minde, that certayne tenauntes wythin the same maner, haue vsed to haue lāde or tenementes, to holde to them, and to theyr heyres in fee simple or in fee tayle or for terme of life. &c. at the will of the Lorde, after the custome of the same maner. And suche a tenaunt may not alyen the lande by dede, for then the lorde may entre as in a thinge forfayte to him. But yf he wyll aliene his lande to an other, him behoueth after some custome to surrendre the tenementes in some court. &c. into the lordes handes, to the vse of him that shall haue the estate in suche forme, or to such effecte.

Fourme of surrender in court baron.

¶ Ad hanc curiam venit A. de B. et sursum reddidit in eadē curia vnum messuagium. &c. in manus domini ad vsum C. de A. et heredū suorum vel heredum de corpore suo exeunt, vel pro termino vite sue. &c. Et super hoc venit predict⁹ C. de A. et cepit de domino in eadē curia messuagium predictum. &c. habendum et tenendū sibi et heredibus suis, vel sibi & heredibus de corpore suo exeuntib⁹ vel sibi ad terminum vite sue, ad voluntatem domini secundum consuetudinem manerii faciendum et reddendum inde redditib⁹, debit seruic. consuetudinem inde pri⁹ debitū, et de iure consuet et dat domino de fine. &c. et fecit domino fidelitatē. &c. That

is

is to say A. of C. cometh vnto this courte
and surrendreth i the same court a mese
&c. into the handes of the lorde to the vse
of C. of A. and his heires, or to the heires
issuinge of his bodye, or for terme of life
&c. And vpō that cometh the forsaid C. of
A. and taketh of the lord of ȳ same court
the forsayd mese, &c. to haue and to holde
to him & to his heires, or to him and to
hys hejres issuig of his body, or to hī for
terme of life, at the lordes will, after the
custome of the manor, to do & yeld there-
fore rentes, dettes, seruices, & customes,
therof before due and accustomed. &c. &
giueth the Lorde for a fine. &c. And ma-
keth vnto the lorde his fealtye. &c.

Fourme of playnte.

¶ And such tenantes ben called tenātes
by coppye of court roll, for that they haue
none other euydence concerning theyr
tenemētes but the copie of the court rols
and such tenātes shal not impled nor be
impleded of theyr tenemētes by ȳ kinges
writte, but if they wil implede other for
their tenementes they shal haue a plaint
made i the court of the lord i such forme
or to such effect A. de. C. querit versus. C
de D. de placito tre, videlicet de vno me-
suagio quadragita acrē tre quatuor acrē
prati. &c. cum pertin. Et facit protestatio-
nem sequi querelā istam in natura breuis
nil regis assise mortis antecessoris ad cō

Playnte.

mune legem, vel breuis domini regis
fine noue diſſeiſine ad communem leg
But in natura breuis, de forma dona
nis in deſcẽdre ad communẽ legẽ. Th
is to ſay. A. of B. complaineth againſt
D. of a plee of lande, that is to ſaye, of
meſe, and .xl. acres of lande .iiii. acres
medowe, &c. withe the appurtenaunce
and maketh proteſtatiõ to ſue his plai
in nature of the kinges writte of aſſi
of the death of his anteceſſour at the co
mon lawe, or by writte of our ſoueray
lord the kinge, of aſſiſe of nouel diſſeiſ
at the comõ law, or i the nature of a w
of Formedone in deſcendre, at the com
lawe, or in nature of ſome other writ,
pleges de proſ. F. G.

What remedye a tenaunt of cuſtome ſhall haue. agaynſt his Lorde.

¶ And though that ſome ſuch tenaun
haue inheritaunce after the cuſtome
the Manoure, yet they haue none eſta
but at the lordes will, after the courſe
the common lawe. For it is ſayde, yf
lorde put them out, they haue none oth
remedie, but to ſue vnto the lord by pe
cion. For if they had any other remed
they ſhuld not be ſayde tenauntes at
lordes will, after the cuſtome of the m
ner, but the lorde will not breake the
ſtome that is reaſonable in ſuch caſes.
But Briã chiefe iuſtice, ſayth, that his
piniõ alwaies hath ben and alwaies

be if such a tenaunt by custome payinge his seruices, be put out by the Lorde he shal haue an action of trespas agaynste him. And likewise was the opinion of Danby chiefe Justice, for he saythe, that he tenaunt by the custome is alswell enerite to haue his lande after the custom s well as he that hath franketenement y the common lawe. Cap.10. H.21.E.4. M.7.E.4.

¶ Tenauntes by the yarde. Cap.x.

TEnantes by the yarde, be tenātes in an other nature, thē tenātes by copy of court Rolle. But the caute for which they be called tenantes by the rodde or yarde, is for that, that whē they shal surrender their tenementes into the lordes hande, to the vse of an other, they shall haue a litel yard or rodde, by the cu stome and vse, in theyr handes, whyche they shall deliuer vnto the Stewarde or Bayliffe after the custome and vse of the manor. And he that shal haue the lande, shal take the same land in the court, and his taking shalbe entred in the roll. And the Stewarde or the Bayliffe accordynge the custom shal deliuer vnto him that taketh the lande, the same yarde, or an o-ther yarde, in the name of seisin. And for this cause they be called tenauntes by the rode. But they haue none other euidēce but coppye of the court rolle.

Capi.10. Surrender made without the courte.

¶ And also in dyuers lordeshippes, and maners, there is such custome, if such tenant that holdeth by the custome, will alien his landes or tenementes, he must surrender his landes vnto the bayliffe, to the reue, or to two sad mē of the same lordship, to the vse of him that shal have the lande, to haue in fee simple, fee tayle or for terme of life, &c. and all that they presente at the nexte courte. Then he that shall haue the lande by copy of court rolle, shall haue the same land after the entent of the surrender.

Of customes.

¶ And so it is to witte: that in dyuers lordships and diuers maners, there be many diuers customes, in suche case as to tenementes, and as to pleade, and as to chinge other thinges and customes to be done, and al that, that is not agaynst reason may wel be admitted and allowed.

Base tenure.

¶ And suche tenauntes that holde after the custome of a seygnorye, or after the custome of a manour, though they haue estate of enheritaunce after the custome of the lordship of the maner, yet bycause they haue not any freehold, by the course of the common lawe, they be called tenantes by base tenure.

Diuersitye.

¶ And diuers diuersitye there be betwene a tenaunt at will whiche is at the leale of the lessour, by the course of com-

common laive, and tenaunt after the cu stome of the manour, in the fourme afor said. For tenaũt at wil after the custome may haue estate of enheritaunce (as it is afore sayd) at the lordes wil after the cu stome and vsage of the manour. But if a man haue landes or tenementes, which be not within such maner or lordeshippe wher suche custome hath ben vsed in the fourme aforsayde, and wil let such lãdes or tenemẽtes to an other, to haue and to holde to him and to his heyres at the wil of the lessour, these wordes (to the heires of the lessee) be voide, for this is the cause if the lessee die, and his heire entreth, the lessour shall haue a good action of Tres passe against him, but not so against the heyre of tenant by ẏ custome. ⁊c. for that the custome of ẏ maner ĩ some case may helpe him to barre his lorde in an action of Trespas.

Cap.10.

Where te naunt at wil hath inheri taunce and where not.

¶ Also tenant by the custom in some pla ces oughte to repaire ⁊ sustaine ẏ houses and the other tenant at wil ought not. Also one by ẏ custome shal do fealty ⁊ the other not. And many other dyuersityes there be be twene them.

¶ Thus endeth the first booke.

Ho.

Capi. 1.

HOMAGE.

Cap. 1.

The maner how the tenaunt shall make homage.

HOmage is the moste honorable seruyce & moost humble seruyce of Reuerence that a franke tenaunt may do to his lorde. For whē the tenaunte shall make homage to his Lorde he shall dyscende and his head vncouered, and his Lorde shall sit, and the tenaunt shall knele before him on both his knees, and holde his handes ioynte togyther betwene the handes of his lorde and shall saye thus, I become your man from this day forward of life and limme and of earthly worshyppe, and vnto you shall be true and faythful, and beare you fayth of the tenementes, that I claym to hold of you, sauing ỳ fayth that I owe vnto our soueraygne lorde the kyng. And then the lorde so sittinge shall kysse him.

The homage of a religious person.

¶ But if an abbotte or prioure, or any other man of religion shal make homage vnto his lorde, he shal not saye, I become your mā. For ỳ he hath professed him self onely to be gods mā. But he shal say thus I do you homage, & vnto you shalbe true and faythful, and beare you fayth for the tenementes, that I claym to hold of you

sauyng

sauinge the fayth that I owe vnto our so Cap. i.
ueraygne lord the kinge.

Also if a womã sole, shall make homage vnto her lorde, she shal not say I become your womã. For that it is not cõuenient The homage of a wyfe.
for a woman to say that she shal become woman to any but only to her husbande when she is wedded. But she shall say, I make vnto you homage, & to you shall be true and faythful, and shall beare you faythe of the tenementes that I holde of you, sauynge the faythe that I owe vnto our soueraygne lord the kinge.

¶ But if a man haue seueral tenaunces Homage when a man holdeth of dyuers lordes.
which he holdeth of seuerall lordes that is to say, euery tenaunce by homage, thẽ when he maketh homage vnto one of his lordes, he shall saye in the ende of his homage, sauing the fayth that I owe vnto the kinge, and vnto my other lordes.

¶ And note wel, that none shal make ho- Maxime. What tenant shall do homage.
mage, but such as hath estate in fee simple, or in fee tayle, or his owne right, or in an other mans right. For it is a ground in the law, that he that hathe estate but for terme of life, shall make no homage, nor take no homage. For if a womã haue lãdes or tenemẽtes in fee siple or in fee tail which she holdeth of her lord by homage and taketh an husbãd, and hath issue, thẽ the husbãd in the life of ỹ wife shal make H. 8. E. 4. folio. 23.

Cap.2.

homage. for that he hath title to haue the land by the curtesy, if he suruiue his wife and also he holdethe in the righte of his wife. But before issue had betwene them the Homage, shal be made in bothe theyr names. But if the wife decease before homage made by the husband, in the wifes lyfe, and the husband holdeth him selfe as tenāt by the curtesy, thē he shal make no homage vnto his lorde, for that, ỹ he hath as yet none estate, but for terme of life. More shalbe said of homage in the tenure of Homage auncestrell.

Fealtye. Cap.ii.

FEaltie is as much to say, as Fidelitas in Latin, and when a franke tenaunte shal make fealtie to his lord, he shal holde his right hand vpō a booke and shall saye thus.

Heare you this my lorde, that I vnto you shal be faythfull and true, and beare you faythe of the landes or tenementes, that I clayme to holde of you, and trewly to you shal do the customes, and seruices that I oughte to do vnto you at termes assygned, as God me helpe and all his sayncles, and shal kisse the boke. But he shall not knele when he maketh fealtye, nor shal make such humble reuerence as is afore sayd in homage. And great diuersitie there is had betwene makinge of fealtye

e ma-
how fe-
e shalbe
de.

altie and Homage. For homage may not be made but to the lord him self. But the stewarde of the lordes courte, or the bayliffe may take fealtie for the lorde.

Cap.x. Dyuersitye betwene homage and Fealtye.

¶Also tenant for terme of life shal make Fealtie, and yet he shall make none Homage, and diuers other diuersities ther is betwene homage and fealtie.

¶Also a man may se a good note. Anno 15.E.3, where a man and his wyfe made Homage and Fealtie in the cõmon bãke which is writtẽ in such forme. Note that John Lenkenor, and Elizabeth his wife made Homage vnto Wyllyam Thorpe in this maner. The one and the other helde ioyntlye theyr handes betwene the handes of William Thorpe and the husband said i this wise: we vnto you make Homage, and beare you faythe for the landes that we hold of. A. your conusour whyche hath graunted you our seruices in. B. & in C, and the other townes. &c. a gaynst al men sauing the fayth that wee owe vnto our souerayngne lord the kinge and to his heyres, & to oure other lordes and the one & the other kissed him. And after they made Fealty, and the one and the other held theyr handes togither vpon a booke, and the husband said ỹ wordes and both kissed the boke. More shalbe said of Fealtye in the tenure of Socage

and

and in the tenure of frankealmoigne, ¶ in the tenure of homage auncestrel.

¶ Escuage, Cap.iii.

Escuage is called in latin Scuragium, that is to saye, seruice of shilde. And such a tenaunt that holdeth his lande by Escuage, holdeth by knightes seruice. And also it is commōly said, that some holde by a fee of knightes seruice, & some by ỹ half fee of knightes seruice. &c

¶ And it is sayd that whē the kinge maketh a byage royall into Scotlād for to subdue the Scottes, than he that holdeth by a fee of knightes seruice, behoueth to be withe the kinge by.xl.dayes well and couenably araied for the warre. And likewise he that holdeth his land by the halfe of a fee by knigghtes seruice, ought to be with the kinge by.xx.dayes. And he that holdeth his land by ỹ fourth part of a fee by knightes seruice, him behoueth to be with the kinge by ten dates. And so after the quātitie he ỹ hathe more, to do more and he that hath lesse to do lesse.

¶ But it appeareth by the plees & argumentes, made in a good plee vpon a writ of Detinue of an obligacion brought by one Henry Gray, that it nedeth not to hī that holdethe by escuage to go him selfe with the king, if he wil find an able persō for him couenably araied for the war

to

to go with the kinge, & that semeth good reaso. For it may be, that he that holdeth by such seruices is sick, in such wise that he may not go nor ride. deth by Escuage maye finde a man to do seruices for hym.

And also an abbotte or any other man of religion, or a woman sole that holdeth by such seruices, ought not in suche case to go in proper person. And sir William Herle that time chiefe iustice of the common place, sayde in the sayd plee, that escuage shal not be graunted, but where the kinge him selfe goethe in proper persone. And so it abode in iudgement in the same plee, if these fortye dayes shalbe accompted frō the day of the muster of the kinges host made by the comens, and by the kinges commaundemēt, or els from the daye that the kinge first entreth into Scotlande. &c. therfore inquere thereof. How the fortie dayes shall be accompted.

And after such viage royal into Scotlande, it is comonly sayd, that by the auctorite of parliament, the escuage shall be set and put in certayne, that is for to say a certaine sum of money, how much euerye that holdeth by a hoole fee, of knightes seruyce, whiche was not in his owne proper perso, nor none other for hi, with the king, shall paye vnto his lord of whō he holdeth his land by Escuage. As it was ordeyned by auctorytye of Parlyamente that euerye one that holdethe by a hole

Cap.30.

hole fee by knightes seruice, whiche was not with the kinge shall paye to his lord xl.s. Then he that holdeth by the halfe of a fee by knightes seruice, shal pay to his lord but.xx.s. And he that holdeth by the iiii.part of a fee by knyghtes seruice shal pay but.x.s. And so who more, more, and who lesse, lesse. And some tenaũtes hold by the custome, that if Escuage renewe by auctoritie of Parliament, to any sum of money, that thei shal pay but the halfe of that summe: and some holde that they shal pay but the fourth parte of that sum. But bycause the Escuage that hee shall pay is not certayne, what the parliamẽt will Assese the Escuage, he holdethe by knightes seruice. But otherwise it is of Escuage certeine, of which shalbe spoken in the tenure of Socage.

Diuersitie of Escuage.

The common speche of Escuage. Paxime.

¶ And if a man speke generally of Escuage, it shal be vnderstand by the comme speche of Escuage, not certeyn, which is knightes seruyce. And such Escuage draweth vnto him homage, & Homage draweth vnto him Fealtie, for Fealty is incident to euery maner of seruice, excepte to the tenure of franke almoigne, as it shal be sayde hereafter, in the tenure of franke almoigne. And so he that holdethe by Homage, and Escuage, holdeth by homage, Fealtie and Escuage.

And

¶ And it is to be vnderstand, that when escuage is so seased by auctoritie of parliament, euery lorde, of whom the land is holden by escuage, shal haue the escuage so assessed by the Parliament, bycause it is vnderstand by the law that at the begining such tenementes were giuen by the Lordes to the tenauntes, to hold by such seruices, to defende their lordes, as well as the kinge, and to set in quiet and resse theyr lordes and the kinge, of ỳ Scottes aforesayd. And for that such tenementes came first of the lordes, it is reason that they haue the escuage of their tenantes.

Distres for Escuage.

¶ And the lordes in such case maye dystreyne for the escuage so assessed, or they may haue the kinges writtes direct vnto the Sheriffes of the shyres, to leuy suche Escuage for theym, as it appereth by the Regester. Fo.88.

¶ But of suche tenauntes that holde of the kinge by Escuage whiche were not with the kinge in Scotlande, the kynge him selfe shal haue the Escuage.

¶ Item in such case aforesaid, where the king maketh a viage ryall into Scotlãd, and the Escuage is assessed by the parliament, if the lord distreyne his tenãt that holdeth of hi by seruice of an hole knyghtes fee, for the escuage so assessed. &c. And the tenaunt pleadeth and will auerre that

he

Cap.4.

he was with the kinge in Scotlande. [illegible]
by,xl.dayes.and the lorde wil auerre t[illegible]
contrarye,it is sayde,that it shalbe try[illegible]
Tryal. by the certification of the Constable [illegible]
the kinges hoost,in wrytinge,vnder h[illegible]
seale,which shalbe sent to the iustices.

¶Homage,fealtye,and Escuage.Cap,iiii.

Wardes. TEnure by Homage, Fealtye, an[illegible]
Escuage, is to holde by knighte[illegible]
seruice,and it drawethe vnto hi[illegible]
warde mariage,and Relieke. For whe[illegible]
such a tenaunt diethe and his heire m[illegible]
being within the age of,xxi.yere,the lo[illegible]
shal haue the lande holden of him vnt[illegible]
the age of the heyre of.xxi.yeare,whyc[illegible]
is called playne or ful age,for that such
an heire by the vnderstanding of the la[illegible]
is not able to do knightes seruice befo[illegible]
the age of.xxi.yere,

The ful age of a woman. In.35.H.6 folio,32. ¶And also if such an heyre be not mar[illegible]
ed at the time of the deathe of his aunc[illegible]
ster,then the lorde shall haue the warde,
and mariage of hym.But if such a tena[illegible]
dye, his heire female beinge of the age
of.xiiii.yere or more,then the lorde shall
not haue the warde neyther of the lande
nor of the bodye. For that a woman of
such age may haue a husbande able to d[illegible]
knightes seruyce. But if suche an heyr[illegible]
female bee within the age of,xiiii. yeare,
and

d not maried, at the time of the deathe
her aunceſter, then the lo2de ſhal haue
e warde of the lande holden of him, till
e age of ſuche an heire female of. xvi.
ere. Fo2 that it is giuen by the Statute
of Weſtminſter the firſt. Ca. 22. that by
wo yeare next folowing the ſayde. xiiii.
eare, the lo2de maye tender a conueniet
mariage, without diſperaginge of ſuche
n heire female. And if the lo2de do not
ender her ſuch mariage with'n the ſaid
. yere, then he at the ende of the ſayd. ii.
ere may enter and put out ꝑ lo2de. But
ſuch an heire female be maried within
e age of. xiiii. yere in the life of her aun
ceſter and her aunceſter dye, ſhe beynge
ithin the age of. xiiii. yere, then the lo2d
al haue but the warde of the lande, till
e ende of. xiiii. yeres of age of ſuche an
eyre female, and then her huſband and
e may enter into the land, and put out
e lo2de, fo2 this is out of the caſe of the
atute. In ſo much that the lo2d can not
nder mariage to her that is maried. &c.
fo2 befo2e the ſayd eſtatute of weſtmin-
er the firſt, ſuch iſſue female, that was
ithin the age of. xiiii. yere at ꝑ tyme of
e death of her aũceſter, & after that ſhe
accõpliſhed the age of. 14. yere with
any teder of mariage to her by ꝑ lo2d
p an heire female then might ſter ito

D.i. the

the land, and put out the lord, as it ap
reth by the rehersall, & by the wordes
the same statute, so that the sayd statu
of westminster the first was made i sup
cale al for the aduãtage of ỳ lords, as
semeth. But yet at all tymes it is vnde
stand by the wordes of the same statu
that the lorde shal not haue the .ii. year
after the .xviij. yere, as it is afore sayde.

The ful age and age of discretion.

¶ And note wel, that the ful age of he
male and female, after the commõ spe
is sayd the age of .xxi. And the age of d
cretiõ is sayd of the age of .xiiij. yere fo
childe at such age, which is wedded w
in such age to a womã, may agre to
mariage or disagree.

The lord shal haue but ones the mariage of his warde.

¶ And if the wardein in chyualry mar
ones his warde wiñ the age of .xiiij. y
to a wife, and after if he at the age of .x
yere disagreeth to ỳ mariage it is said
some ỳ the childe is not holden by ỳ la
to be maryed an other tyme by his w
deyn, for that the wardeyne had once
mariage of him, and therfore he was
of his warde, as cõcerning the warde
his body. And whẽ he had ones the m
age of him, & ones was out of his wa
he shal haue no more ỳ mariage of h
the same maner it is, if ỳ wardeyn m
him, and the wyfe dye, the childe bei
within age of .xiiij. yere, or .xxi. yeares.

An

And that such chylde maye dyssagre to such mariage, whē he cometh to the age of. xiiii. yere it is proued by ỳ wordes of ỳ statute of. Merton. Cap. 6. that sayeth thus De dominis q̄ maritauerint illos quos habēt in custodia sua villanis, vel aliis si ut burgencibus, vbi disperagēt, si talis heres fuerit infra. xiiii. annos et talis eta tis q̄ mrimonio cōsētire non possit, tūc si parentes illi⁹ cōqueranture, dñs amittat custodiā illam vsq̄ ad etatem heredis. Et omne cōmodum q̄ inde receptū fuerit cō mertatur ad cōmodū heredis infra etatē xistentis, secundū dispositionē parentū propter dedecus et factū. Si autez fuerit xiiii. annorum et vltra, quod consentire poterit, ꝛ tali maritagio cōsenserit nulla sequatur pena. And so it is proued by the same statute, ỳ no disperage shall be, but where he that hath the warde, maryethe him within the age of. xiiii, yere.

Also it hath bene a questyon how these wordes shuld be vnderstande. Si parentes conquerantur. ꝛc. And it semeth vnto some whiche considerynge the statute Magna carta: Capi. vi. that wyllethe that heredes maritentur absq̄ disperacione. ꝛc. vppon the whiche this sayde statute of Merton, vppon this poynte grounded as it semethe, and in so muche that it was neuer sene nor heard Question.

that any action was brought bpō the ſ
tute of Merton, foꝛ ſuche diſperagin
againſt the wardein foꝛ the cauſe afo
ſaid. And if any action may be taken b
ſuch matter, it ſhould be taken by cō
pꝛeſumption befoꝛe this time, oꝛ at ſo
time to be put in bꝛe. And note, that th
woꝛdes ſhalbe vnderſtād in ſuch ma

The expoſicion of theſe woꝛdes. Si parentes conquerantur. i. ſi paren

Si parentes conquerantur ſe.

inter ſe lamentantur, which is as mu
to ſay, that if the couſins of ſuch a chyl
haue cauſe to make lamentacion, oꝛ co
playnt among thē, foꝛ the ſhame done
theyꝛ couſin ſo deſperaged, which in m
ner is a ſhame to them all, then may t
nert couſin, to whom the herytage ma
not deſcend, enter and put out the war
in chiualrye. And if he wil not, an oth
couſin of the childes may do it, and he
take the iſſues and pꝛofites of the childe
and of that yelde the childe accōpt, whe
he cometh to his ful age. Oꝛ els ỹ child

Inquete.

within age may enter hym ſelfe, and p
out the warden. &c. Sed quere de hoc.

Diuers diſperaginges.

¶ Alſo there be manye other diuers d
peraginges, which be not ſpecified in t
ſame eſtatute. As if the heyꝛe ỹ is i war
be maꝛied vnto one ỹ hath but one foo
oꝛ one hād, oꝛ is deformed oꝛ lame, oꝛ h
uing an hoꝛryble diſeaſe, oꝛ els a great
cōtinual infirmitie, oꝛ if the heire male

mari

Inquere.

maryed to a woman that is paſte chylde
bearinge. And many other cauſes of diſ-
peraginge ther be, but enquyze of them,
for it is good matter to learne.

And of heires males that be withi age
of .xxi. yeare after the death of theſe aūce-
ters vnmaried. In ſuch caſe ẏ lozd ſhall
haue ẏ mariage of ſuch an heire, & haue
pace and time to tender to hym couena-
ble mariage, without diſperaginge with
in the ſame tyme of .xxi. yeres.

If that the warde re-
fuſe the mas
ryage he
ſhal paye.

And it is to wit, that the heire in ſuche
caſe may choſe if he wil be maried or not
But if the lozd, which is called wardeyn
in chyualry, tender a conenable mariage
of ſuch an heir, withi the age of .xxi. yere
without diſperaginge, and the heire re-
fuſe it, and wil not be maried within the
ſame age, then the ſayde wardeyne ſhall
haue the value of the mariage of ſuch an
heyre. But if ſuch an heire male marrye
hym ſelfe within the age of .xxi. yeare a-
gaynſt the will of the wardeine in chyual
rie. Then ſhal the wardein haue double
the value of the mariage by force of the
ſtatute of Merton afozeſaid as in ẏ ſame
ſtatute is moze fully compziſed.

Alſo dyuers tenauntes holde of theyr
landes by knyghtes ſeruyce, and yet
they hold not by eſcuage, noz pay no Eſ-
cuage as they that holde their landes by

Cap.5.

Castel ward.

castel ward, that is to say to kepe a tow
of a castel or a gate, or sum other place
the castel by reasonable warning, whe
theyr lordes here tell, that enemies ly
come or be come into England.

Maxime.

¶ And in many other cases a man may
hold by knightes seruice, and yet he ho
deth not by escuage nor paieth no escu
as shalbe said in ỹ tenure of grād serui
But in all cases wher a man holdeth b
knightes seruices, such seruices or awe
vnto the lord, ward, and mariage.

Reliefe.

¶ And if a tenant that holdeth by seruic
of an hole knightes fee, die, his heyre
inge at ful age of .xxi. yere, then the lor
shal haue .C.s. for a relefe. And of ỹ he
of hī that holdeth by halfe a knightes fe
l.s. And of him that holdeth by a quart
of a knightes fee .xx.s. And he that ha
more, more, and he that hath lesse, lesse.

¶ Also if a man may hold his land of h
lorde by the seruice of two knightes fe
and then the heyre being of ful age at t
time of the deathe of his auncestor, th
paye to his lorde .x.li. for relefe.

The father lyuing, the sonne shal not be vnder gouernaunce of any other.

¶ Also if there be grandefather, moth
and son and the mother dieth, the fath
and the son liuing, and after the gra
father, which helde his land by knight
seruice, dieth seised, and the lande disc
deth to the son of the mother, as heyre

the grandfather, which is withlage. In such case the lord shal haue the ward of the lande. But not the ward of the body of the heyre. For ỳ none shalbe in ward of his body to any lord, his father liuing because ỳ father during his life shal haue the mariage of his heire apparat, & not the lord. Otherwise it is if the father be dead, the mother liuing, where the land holden in chiualrie discendeth to the son on the fathers side. &c.

¶ Also if a man be seised of land, whyche is holden by knyghtes seruyce, and maketh feoffemente in fee to his vse, and dieth seased to the vse of his heyre wythe in age, and no wyll by hym declared, the lorde shal haue a wrytte of ryghte, of the warde of the body, and of the lande, as if the tenant had died seised of the demeine. And if the heire be of ful age at the death of his auncestor, in such case he shal pay reliefe, like as if he had bene seased of the demeine, and that is by the statute of An. H. 7. Cap. 17. Gardeyne by reason of vse

¶ Also there is wardeyne in ryghte chyualrie, and wardein in dede in chiualry. Wardeyn in righte chiualrye, is where the lord bycause of his lordshyppe is seyed of ỳ warde of the land, & the heyre. vt supra. wardē i dede i chiualry is, where the Lorde in suche case after his seysyne Diuision. Gardeyne ryght

D. iiii. graunteth

Capi. 5. Gardeyne in dede.

grauntith by dede, or without dede, the warde of the lande, or of the heyre, or both to an other man, by force of whych graunt the grauntee is in possession, the is the grauntee called wardein in dede.

¶ Tenure in Socage. Cap. 6.

Tenure in socage, is wher ỳ tenãt holdeth of his lord his lãde by certaine seruice, for al maner of seruices, so that the seruyce be not knyghtes seruice. As wher a mã holdeth his lande of his lord by fealtie & certein rent, for al maner of seruices, or els wher a mã holdeth his lãd by homage, fealte, & certain rent for al maner of seruices: for homage by him self maketh not knightes seruice.

What is tenure in socage.

¶ Also a man may hold of his lord one by fealtye, and suche tenure, is tenure in Socage, for euerye tenure that is not tenure in chyualry, is tenure in socage.

¶ And it is sayd that the cause whereof suchtenure is said, and hath the name of tenure in socage, is thus. Quia hoc socagium, idem est quod seruicium soce, be soca soce, idem est quod curua, s. one soke or one plow land. And in olde time before the limitacion of tyme of minde great part of theyr tenantes, that held of theyr lordes by socage oughte to come to theyr plowes euerye of the sayd tenãtes by certayne daies in the yere to eare and sowe

owe the lordes landes of his own grayne. But for that ſuch workes wer done for the liuelode and ſuſtinaunce of theyr lordes, they were acquited againſt theyr lordes of al maner of ſeruices.

¶ And for this that ſuche ſeruices were doone with theyr plowes, ſuche tenure was called tenure in ſocage. And after ỳ ſuch ſeruices were changed in diuers other maner ſeruices, by cõſent of the tenantes, and by the deſyre of theyr lordes that is to ſaye, into a perely rent. &c. But yet the name of ſocage abideth, and in diuers places thoſe tenãtes yet do ſuch ſeruice with their plowes vnto theyr lordes ſo ỳ al maner of tẽures ỳ be not tenures by knight ſeruice, be cald tenurs in ſocage

¶ Also if a man hold of his lorde by eſcuage certayn, that is to ſay in ſuche forme that when eſcuage renneth, and is aſſeſſed by the parliament to a more ſumme or to a leſſe ſumme, then the tenant ſhall pay to his lorde but haife a marke for eſcuage, and neyther more ne leſſe to how great ſumme, or litle ſumme, that the eſcuage runneth, in this caſe bycauſe the ſumme ỳ he ſhal pay for the eſcuage is in certayne before that any eſcuage is aſſeſſed. &c. ſuch tenure is tenure in Socage And not by knightes ſeruice. But whe r the ſumme that the tenaunte ſhall pay e- A rule.

for escuage is not certayne, that is to say wher it may be, that the summe that the tenant shal pay to his lorde for escuage, may be at one time more, and at an other time lesse, after that it is assessed. &c. then such tēure is tenure bi knightes seruice.

In other differēce.

¶ Also if a man hold his land for to paye certaine rent to his lord for cassel ward, such tenure is tenure in socage. But where the tenaunt ought by him selfe, or by an other to make cassell warde, suche tenure is tenure by knightes seruice,

Warme. Rent seruice.

¶ Also in all cases where the tenant holdeth of his lorde, to paye to him any certayne rent, that rent is called rēt seruice

The nereſt frende.

¶ Also in suche tenure in Socage, if the tenant haue issue, and die, his issue being within the age of .14. yere, then the nerte frende of the heyre, to whome the herytage may not descēd, shal haue the ward of the land and of the heyre, vnto the age of the heyre of .xiiii. yeres, and such wardein is called wardein in socage. For yf lande descende to the heire by the fathers side, then the mother, or some other nigh cousin of the mothers side, shal haue the ward. And if land descend to the heyre by the mother side, then the Father or the nert frende of the fathers side, shal haue the ward of such landes or tenementes, And when the heyre commeth to the age

of

of.xiiii.yere complete, he may enter and put out his wardein in socage, and occupie the lande him selfe if he will.

¶And such wardein in socage shall take no issues or profites of such landes or tenementes to his owne vse, but only to ỳ vse and profit of the heire, and of that he shal yelde accompte to the heyre, when it pleaseth the heyre, after that the heyre hath accomplished the age of.xiiii. yeres But such a wardein vpon such accompt shal haue allowance of al his reasonable costes & expences of all thinge, as of meat drinke and other necessaries. &c.

The gouernour shall giue accõpt to the heyre.

¶And if suche a wardein mary the heire within age of xiiii. yere, he shal make accompte to the heyre, or to his executours of the value of the mariage, thoughe hee toke nothing for the value of ỳ mary age for ỳ it shalbe arected his owne foly, that he would mary him without takyng the value of the mariage, without he marye him to such a mariage ỳ is worthy in value, as much as ỳ mariage of the heir, &c

In other gouernour.

¶Also if any other mã that is not a nigh frende. &c. occupie the landes & tenementes of the heire, as wardein in socage he shalbe compelled to yelde accompte vnto the heyre as wel as his nert frende. For it is no plee for him in a writte of accompte to saye, that he is not his nighe

nigh frend. &c. But he shall answer whether he occupieth the landes or tenementes, as wardeyn in socage or not.

Inquere. ¶ But inquere if after that the heyre haue complished the age of. xiiii. yeare. and the wardein in socage continually occupieth the lande til the heyre comethe to ful age of. xxi. yere, yf the heyre at his ful age haue none action of accompte agaynst the wardeyne of the time that he hath occupied after the sayde, xiiii. yeres agaynst him, as against his wardein in Socage or against him, as agaynste his bayliffe.

¶ If the wardein in chiualrye make his executours, and die the heire being within age. &c. the executoures shal haue the warde during the nonage. But if the wardein in socage make executours and dye, the heyre beinge within age of. xiiii. yeres, his executours shall not haue the warde, but an other nigh frend to whom the heritage maye not discend, shal haue the wardē.

¶ And the cause of diuersitie is, for that the wardein in chiualry hathe the warde to his proper vse, and the wardene in socage hath not the warde to his owne vse but to the vse of the heyre.

¶ And in suche case wher the wardeine in socage dieth before any suche acompte made

made by him to the heire, the heyre is of that without remedye, for that no writte of accompt lieth againſt the executours, but onely of the kinge. Without remedy. The preroga-tiue of the kynge.

¶ Alſo the lorde, of whome the lande is holden in ſocage after the death of his tenaunt ſhal haue reliefe in ſuche fourme. If the tenaunt hold by fealti and certain rent to pay yerely. &c. If the terme of payment be to paie by. ii. termes of ỹ yere, or by. 4. termes of ỹ yere the lord ſhal haue of the heire of his tenant as much as the rent amounteth that he ſhuld pay by yere. As if the tenaũt helde of the lorde by fealtie, and. x. s. of rent, payable at certayne termes of the yeare, then the heyre ſhall pay to the lord x. s. for reliefe, aboue this x. s. that he ſhal pay for the rent.

¶ In like maner is if a man be ſeaſed of certayne lande, that is holden in ſocage, and maketh a feoffement in fee to his vſe and diethe ſeiſed of the vſe (his heyre beinge of ỹ age of. xiiii. yeares or more) and no will by him declared, the Lorde ſhall haue reliefe of the heyre as is aforeſayde and this is by the ſta. of an. 19. H. 7. ca. 15. Reliefe in tenure of ſocage.

¶ And in ſuch caſe after the deathe of the tenaũt ſuch reliefe is due to the lord icõti nẽt, of what age ſoeuer the heyre be, ſo ỹ he paſſe the age of. xiiii. yeres, for ỹ ſuche a lord may not haue the ward of the body nor

Cap. 5.

nor of the land of the heyre. And the lord in such case oughte not to abyde the payment of his relefe after the termes and dates of paymēt of the rent, but he ought to haue his relefe incontinēt. And therfore he may incontinent distreyne after the death of his tenant for the relefe.

In the same maner it is, where a tenāt holdeth of his lord by fealtie, & by a poūd of cōmin, or by a pounde of peper, beside the common rent, and the tenant die, the lord shall haue for his relefe, a pound of cummin, or a pound of pepper.

When the land shal distrayne in continente and when he ought to tary.

¶ In the same maner it is, where the tenante holdeth to paye by yere a certayne numbre of capons or hennes, or a payre of gloues or certayne bushels of wheate and suche other maner thinge. But in some case the lorde oughte to abyde to distreyne for his relefe til a certayne time.

As if the tenant holde of his lorde by a rose, or by a bushell of roses, to pay at the feast of saynt John Baptist, if such a tenant die in winter, thē the lord may not distreine for his relefe. &c. vntil the time that the roses by ỹ course of the yere may haue their growinges. &c. et sic de simi.

question.

¶ Also if any peraduēture wil aske why a man may not hold of his lord by fealty onely for al maner of seruices, i so much that when the tenant shal make his fealtie

the he shal swere to his lorde, that he shal do to his lorde al maner of seruices due & when he hath made fealtie in suche case there is none other seruice due. To thys it may be sayd, that wher the tenant holdeth his land of his lord, it behoueth that he ought to do to his lord some maner of seruice, for if the tenaunt nor his heyres ought̄e to do no maner of seruyce to hys lord, nor to his heires, then by long time continued, it shuld be out of mind & remēbrance of whom the lande was holdē, of the lord, or of his heyr or not, & thē more ofter and more soner will mē say that the land is not holden of the lord, nor of hys heires thē otherwise, & vpon this ỹ lorde shal lose his eschete of the lande, or praise the forfayture or profite ỹ he might haue of the landes. So it is reason ỹ the lorde & his heires haue some seruice done vnto them for a pryse, & a wituelle, that the land is holden of them, & for that fealtye is incidēt to al maner of tenures, excepte tenure of franke almoigne, as it shall be said in frāke almoigne. And bicause that the lord wil not at the begynninge of the tenure haue any other seruices but fealtie, it is reason ỹ a man may holde of his lord onely by fealtie, & whē he hath made his fealty, he hath done al his seruices.

Junswere

Wherfore faut is gyuen

A rule.

Also if a mā let to an other for term of lyfe

Cap.5.

lyfe certeyne landes or tenemētes, [illegible] out speakinge of any rent to yeld to hy[illegible] yet he shal do to the lessour fealty, for th[illegible] he holdeth of him. Also if a lease be ma[illegible] to a man for terme of yeres, it is said, [illegible] lessee shal do the lessoure fealtye, for th[illegible] he holdeth of him, and this is proued in[illegible] by the wordes in a writ of wast, whē t[illegible] lessour had caused to bringe a writte [illegible] wast against him, the which writte say[illegible] that the lessee holdeth the tenementes [illegible] the lessour for terme of yeres, so the wr[illegible] proueth a tenure betwene the. &c. But [illegible] that is tenaunt at wil after the course [illegible] the common lawe shal not make fealtie, [illegible] bicause he hath no maner of sure estate. But otherwise it is of tenāt at will afte[illegible] the custome of ỹ manour, bicause ỹ be is bounde to do fealtie to his Lorde for tw[illegible] causes, one is bycause of custome, the o[illegible] ther is because he taketh his estate i such forme to do his lorde fealtye.

The forme of a writ of wast.

¶ Franke almoygne. Cap. vi.

The begin-ning of the

THenure in franke almoigne, is whe[illegible] an abbotte, or a priour, or an other man of religion, or of holy churc[illegible] holdeth of his lorde in franke almoygne that is to saye in Latine. In liberam elemosinam, that is to saye, in free almes.

¶ And such tenure begā first i olde tyme in such forme, whē a mā in old time was [illegible] seised

Lap.6.

fyrſt gyft in free almeſſe.

ſyde of landes or tenementes in his demeine as of fee, and of the ſame landes or tenementes enfeoffed an abbotte and his couent, or a priour & his couent, to haue and to hold to the, & theyr ſucceſſours for euer, in pure and perpetual almeſſe, or in franke almoigne. In theſe two caſes the landes were holden in franke almoigne, or by ſuch wordes to holde of the graūtour, or of the feoffour, and his heyres in free almeſſe, in theſe two caſes the tenementes were holden in frāke almoigne.

¶ And in the ſame maner it is, where the landes or tenemētes were graūted in olde time to a deane & chapiter, and to theyr ſucceſſours, or to a perſon of a Churche, and to hȳ ſucceſſours, or to any other mā of holy churche, and to his ſucceſſours in free almeſſe, yf he had capacitie to take ſuche graūtes or feoffementes. &c.

¶ And ſuche as holde in free almeſſe be bounde of ryght before god, to doe oriſons, prayers, maſſes, and other diuine ſeruice for the ſoules of theyr graūtours or feoffours, or for the ſoules of theyr heyres whiche be deade, and for the proſperitie and good lyfe, and good health of theyr heyres that be alyue.

¶ And for this they doe at no time no maner of fealtie vnto theyr lordes, for that ſuche diuine ſeruyce is better for theym

Capi.6. Tenaũt in free almes shal do no homage.

bekore God, then anye doynge of fealty and also that these wordes, free almes or franke almoygne, exclude the lorde haue any worldly or temporall seruyce but only to haue diuine and spiritual seruyce to be done for him. &c.

¶ And if suche that hold theyr tenements in free almes, or in franke almoygne wyl not, or fayle to do suche diuine seruyce, as it is sayde, the lorde may not distreyne them for the seruice vndone. &c. bycause it is not sette in certayne, what seruices they ought to do, but the Lorde maye of that complayne to theyr ordynarie, prayeng him that he wyl set punishment and correction of that.

¶ And also to proue and se, that such negligence be no more done, and the ordinary of ryght ought to do that.

Tenaunt by dyuyne seruyce.

¶ But where an abbot or a priour holdeth of his lorde by certayne dyuine seruice, in certayne to be done, as for to syng a masse euery friday in the weke for the soules. &c. or euery yere at suche a day to syng Placebo and Dirige. &c. or to distribute in almes to an hundred poore men, an hundred pence at such a daye, in such case yf suche dyuine seruice be not done, the lorde maye distreyne. &c. for that this dyuyne seruyce is in certayne by the tenure

nure, what the abbotte or the ꝑtoure ought to do. And in ſuche caſe the lorde ſhal haue the fealtie.&c. as it ſemeth. Capl. 6

And ſuch tenure is not ſayde tenure in free almeſſe, but it is ſayde tenure by dyuine ſeruice, for in tenure is free almeſſe or franke almoygne, no mencio is made of any maner certaine ſeruice. For none may holde in free almeſſe or franke almoygne, if there be expꝛeſſed any maner of certayne ſeruice that he ought to do.

Alſo yf it be demaunded whether the tenaũt in franke mariage ſhal do fealtye to the donour, or to his heyres, before the fourth degree be paſſed.&c. ye maye aunſwere and ſaye ye, for he is not lyke as to his entent to a tenaũte in free almes, or franke almoygne, for that the tenaunt in free almes ſhall do bycauſe of his tenure diuine ſeruice for his lorde, as it is afore ſaid, and that he is charged to do by the lawe of holy church, and for that he is excuſed & diſcharged of fealtie. But tenaũte in frãke mariage doth not for his tenure ſuch ſeruyce. And if he do not to his lorde fealtie, then he doth not to his lorde anye maner of ſeruyce neyther ſpiritual ne temꝑꝛal, which ſhulde be an inconuenience and againſt reaſo that a man ſhuld haue eſtate of inheritaũce of an other, and yet lorde ſhal haue no maner of ſeruice of hi

Iquiſition.

An anſwere.

Cap.6. and so it semeth, that he shall do fealtie
his lord, before the fourth degree be pa
&c. And when he hathe done fealtie,
hathe done al his seruices.

¶ And if an abbot hold of his lorde in
almesse, and the abbot and his conent
der theyr common seale, alyene the sa
lande to a seculer man in fee symple,
this case the seculer man shall do fealt
to the lorde, for that he maye not holde
his lorde in free almesse, for yt the lor
ought not to haue of hym fealtie, then
shall haue of hym no maner of seru
which shuld be an inconuenience, whe
he is lord, & the tenemētes holde of hi

¶ Also if a man graunt at this day to
abbot or to a priour landes or tenemē
in free almesse or franke almoygne, the
wordes free almesse or franke almoyg
be doyde, for that it is ordeyned by
statute, which is called. Quia empto
terrarum, which statute was made.
18, E. primi, that no man maye aliene
graunte landes or tenementes in fee
ple to holde of hym selfe: so that yf a m
seysed of certayne landes or tenemen
which he holdeth of his lord by knigh
seruice, and at this daye he grauntet
lycence the same lande to an abbot. &c.
free almes or frāke almoigne, the ab
shal hold immediatly the same tenem

Westmyn-
ster. the. iiii.

tes by knightes ſeruice of the ſame lord, of whome his grauntour helde, and ſhal not holde of his grauntour, bycauſe of the ſame eſtatute, ſo that no man maye hold in free almes or in franke almoigne, but if it be by title of preſcription, or by force of a graunt made to some of his predeceſſours, before the ſame ſtatute was made. Cap. 6.

¶ But the kyng may geue landes or tenementes in fee ſimple, to hold in fre almes or franke almoigne, or by other ſeruices, for he is out of ỹ caſe of the ſtatute. 20. H. 6. in aſſiſe.

¶ And note wel, that no man may holde landes or tenementes in free almes, but of the grauntour or his heires, and that for the priuitie of the gift, and therfore it is ſayde, that if there be lorde, meſne, and tenaũt, and the tenaũt is an abbot, that holdeth of his meſne in franke almoigne if the meſne die without heire, thẽ ỹ meſnaltie ſhall come by eſchete to ỹ ſayd lord aboue, and the abbot then ſhall holde of him immediatly only by fealtie, and ſhal do him fealtie, for that he may not holde of hym in franke almoygne. &c. The kinge is aboue his lawe.

¶ And note wel, where that ſuche a man of religiõ holdeth his landes of his lorde in fre almes. &c. his lord is bound by the law to acquite him of euery maner of ſeruice, ỹ any lord aboue him, wyl demaũd or aſke of the ſame tenemẽtes. And if he

Capi. 7 A writ of meine.

acquite him not, but suffereth him to be distreined. &c. the he shal haue against the lorde a writ of meine, and recouer against him his damages and costes of his suit.

¶ Homage auncestrel. Cap. vii.

TEnure by homage auncestrell, is where a tenaũt holdeth his land of his lorde by homage, and the same tenaũt and his auncestor, whose heire he is, haue holde the same lande of the same lorde, and of his auncestors, whose heire he is, from time out of mind, by homage and haue done homage vnto hi. And this is called homage auncestrell, bycause of the cõtinuance which hathe bene by time of prescription in the tenancy, in ỹ blood of the tenaunt, and also in the lordeshyp in the bloud of the lorde.

Warantie.

¶ And such seruice of homage auncestrell dzaweth to hi warrãtye, ỹ is to say, if the lord ỹ is alue hath receiued the homage of such a tenãt, he ought to warrant his tenãt, when he is impleded of the lande holden of him by homage auncestrell.

Aquitance.

¶ And also such seruice by homage auncestrel dzaweth to hi acquitãce, ỹ is to say, ỹ lord ought to acqt hỹ tenãt against all other lordes aboue hi of euerl mañ of seruice.

Whan the lorde is bounde to

¶ And it is sayd, that if suche tenante be impleded by a precipe qꝫ reddat. &c. And he voucheth his lord to warrantie whi

comma

cõmeth in by processe, and asketh of the tenaũt what he hath to bynd him to warrantie, and he sheweth how he & his auncestors, whose heire he is, haue holdẽ the lande of the vouche and of his aũcestors whose heire he is, by homage fro tyme out of mind, if the lord which is vouched hath receiued none homage of the tenãt nor of any of his ancestors, the lord then if he will may disclaime in the lordshyp and so put out the tenaũt of his warrãtie But if the lorde, which is vouched, hathe receiued homage of the tenant, or of any of his ãcestors, thẽ may he not disclaime but he is bounde by the law to warrant the tenant, & then if ỹ tenaũt leese ỹ lande in defaute of the vouche, he shall recouer in value against the vouche of ỹ lãdes or tenementes, that the vouche had at the tyme of the vouche, or any time after.

Capt. 7. Warantie.

Disclaime.

Recouerit in value.

And it is to wete, that in euerye cause where the lord may disclaime in his lordshyp by the law in court of record, and if ỹ wil disclaime, his seignorie is extincte, and the tenant shal hold of the lorde next aboue the lorde, whiche so disclaymeth.

A rule.

But if an abbot or a ꝓour be vouched, by force of homage auncestrel. &c. though he hath neuer take hemage. &c. yet he cã not disclaime in this case, nor in none other case, for thei cã not deuest ỹ thing in

Cap. 7. fee, which hath ben vested in their hous

P. 10. E. 4. ¶ Also if a man that holdeth his land by homage auncestrel, alieneth his lande t another in fee, the aliene shal do homage to his lord. But he holdeth not of his lor by homage ancestrel, for that the tenãcy was not cõtinued in the blood of the an cestors of the aliene, nor the aliene shal neuer haue the warrantie of his land, a his lorde, for that the continuance of th tenaunce in the tenaunt and in his blo by the alienation is discontinued, and so se, that the tenaunt that holdeth his land by homage auncestrell of his lord, if such a tenãt alieneth in fee, though he take estate of the aliene againe in fee, he hol deth the lande by homage, but not by ho mage auncestrell.

A man shall make ho mage but ones i his life. ¶ Also it is sayde, that if a man holde his lande of his lorde by homage and fealtie, and he hath made homage and fealtie vn to his lorde, and the lorde hath issue a son and dieth, and the lordeshippe discendeth to his son: In this case the tenaũt, which did homage to the father, shall not do ho mage to the son, for that when a tenaunt hath made ones homage to his lorde, he is excused for terme of his lyfe, to make homage to any other heire of the lorde. But yet he shall do fealtie to the sonne heire of his lorde, thoughe that he made

fealtie

Capi. 7.

ealtie to his father.

Also if the Lorde after the homage to him made by his tenaunt, graunt the seruice of his tenant by dede vnto an other in fee, and the tenaunt attourneth. &c. the tenāt shall not be cōpelled to do homage but he shall do fealtie, thoughe he dyd fealtie before to the grauntoure, for fealtie is incident to euery attornement of tenementes, when the lordshippe is graunted But if a man be seised of a manour, and an other man holdeth his land of him as of the manour aforesayd by homage, the whiche hathe done homage to his Lorde whiche is seased of the manoure, yf after that a straunger bringe a Precipe quod reddat, agaynste the lorde of the manour and recouereth the manour against him sheweth execution. &c. In this case the tenaunt shall ones againe do homage to him, that recouereth the manoure, all be it he hathe once done homage before, for that the state of hym, whyche receyued the fyrste homage, is defeted by the recouerye. And it shall not lye in the mouthe of the tenaunte to falsyfye or defete the recouerye, whiche was agaynste his lorde, and so se the dyuersitie in thys case, where a man commeth to his lordshyppe by recouerye, and where he commeth by discent or graūt of the seignorie

A rule when a man shall make twyse homage.

Diuersitie.

Capi.7. When the tenant shall not be distrained when he doth no homage.

¶Also if a tenant, whiche ought by his tenure to do homage to his lord, come to his lord, and say to him, syr I owe to you homage for the tenement that I holde of you, & I am redye here to do you homage, for the same tenement for the whiche I praye you that ye will nowe receiue it of me, and if the lord the refuse to receiue it, then after suche refuse the lord may not distreine the tenant for the homage vndone, before that the lorde require the tenaunt to do to him homage, and the tenaunt refuse to do it.

¶Also a man may holde his lande by homage ancestrel, & by escuage, or by other knightes seruice, as wel as he might hold his lande by homage ancestrel i socage.

¶Graunde sergeãti. Cap. viii.

TEnure by graunde sergeantie, is where a man holdeth hys landes and tenemẽtes of our soueraygne lorde the kynge, by the seruyce which he ought to do in his owne proper person, as to beare the kynges banner, or hys speare, or to leade his hoost, or to be hys marshall, or to beare hys swoorde before hi at his coronacõ, or to be hys sewer at his coronation, or his caruer, or his butler, or to be one of his chamberlaynes of his receite of hys eschequer, or to do other suche seruice. &c. and the cause wher

fore

fore suche seruice is called great seriātie is for that it is more honourable & worshipfull and digne, then is the seruice of the tenure by escuage, for he that holdeth by escuage is not limitted by his tenure to do any more speciall seruice, then any other that holdeth by Escuage oughte to do. But he that holdeth by graunde sertantie, oughte to do a speciall seruice to the king, he ỹ holdeth by escuage oughte not so to do. Capi 8. The most honourable hold

Also if the tenaūt which holdeth by escuage die, his heire being at ful age, if he held by a knightes fee, the heire shal pay but an. C.s. for his relefe, as it is ordeined by the statute of magna carta. ca.i. but he that holdeth of the kyng by graūd sergeantie, and dieth, his heyre beynge of full age, the heire shall paye vnto the kynge for his relefe, the value of hys landes or tenementes by yere, beside the charges and reprises, whiche he holdeth of the kinge by graunde sergeantie. Relefe.

And it is to witte, that seriantia, in latine is seruicium, and so magna seriātia in latine, is as much as magnum seruicium, that is to say, a great seruice.

Also those whiche holde by Eschuage, oughte to do theyr seruice oute of the realme, but they that holde by graunde sergeauntie, for the mooste parte oughte

to

Cap. 8. Howe tenure by tornage is graunde ser-geantie.

to do their seruices within the realme.
Also it is sayd, that in the marches of Scotlande some holde of the kinge by cornage, that is to say, to blowe an horne for to warne the men of the contrey. &c. when they here that the Scottes or other enemies wyll come or entre into England &c. which seruice is graunde serieantie.
But if any tenaunt holde of any other lord thē of the king by such seruice of cornage, ỳ is not graunde seriantie, but it is knightes seruice, & draweth to himward mariage, & relife, for none may holde by graunde seriantie, but of the kinge onely.
Also a man maye se in the. xi. yeare of Henry the fourth, that Cokaine then beynge chiefe baron of the eschequer, came into the common place, bryngynge wyth him a copie of recorde in these wordes. Talis tenet tantam terram de dño rege, per seruantiam, ad inueniēdū vnū hominem ad guerrā infra quatuor maria. &c. that is to saye, such a mā holdeth so muche lande of our soueraigne lorde the kynge by seriantye, to find one man to warre within the foure seas, and he demanded whether it was graunde seriantie or petite seriantie, and Hanke then sayde that it was graunde seriantie, for that it was seruice to be done by the bodie of a man and if that he may not finde a mā to do

seruices

seruice for him, he must do it hi selfe. To whom the other Justices alleged. Cokain then said, the tenaut in this case shal pay relefe to the value of the lande by yere, to whiche was made none aunswere. Cap.9.

And note that all they that hold of the kynge by grande sergeantye, holde of the kyng by knyghtes seruice, and the kyng shal haue warde, mariage, and relefe. But the kyng shal not haue of them escuage, if they holde not by escuage.

Petite sergeantie. Cap.ix.

TEnure by petite seriantie is where a man holdeth his lande of our soueraygne lorde the kynge, to yelde vnto hym yerelye a bowe, or a swoorde, or a dagger, or a knife, or a speare, or a paire of gloues of maile, or a payre of spurres gylte, or an arrowe, or dyuers arrowes, or to yelde suche other smalle thynges, touchynge the warre. And suche seruyce is but Socage in effecte, for that suche tenaunte by his tenure ought not to go nor doo anye thynge in his owne proper persone, touchynge the warre. But yelde and paye yerelye certayne thynges vnto the kynge, as a man ought to paye a rent. Petite sergeantie is socage in effecte.

And note that no man may holde land by graunde sergeantye, nor by petyte sergeauntye, but of the kynge.

But

Cap.10.

¶ Burgage. Cap. x.

THenure i Burgage is where an ancyant borough is, of the whych the kynge is Lorde, and they that haue tenementes within the borough holde of the kyng theyr tenementes, that euery tenaunt for his tenement ought to pay to the king a certayne rēt by yere, &c. And such tenure is but tenure in socage, & ỳ same maner is where an other lorde spiritual or temporall is lorde of suche a borowe, & the tenaūtes of the tenemētes in suche a borough holde of theyr lorde to pay eche of thē yerely an annuel rent, and it is called tenure in Burgage, for that the tenementes within the borough be holden of the Lorde of the borough by certayne rente, &c.

Burgeises of the parliamēt

¶ And it is to wyte, that the auncient townes called boroughes be ỳ most auncient & eldest townes that be within England. For the townes that now be cities or couuties, i olde time were boroughes and called boroughes, for of suche olde townes called boroughes, cōe these burgeises to the parliament when the kyng hath summoned his parlyament.

Customes of townes.

¶ Also for the most part, such boroughes haue diuers customes, & vsages, whiche be not had in other townes, for some borough had such custome, ỳ yf a mā haue

ffue mayne sonnes and dieth, the yongest Capi. 10
sonne shall inherite all the tenementes,
which where his fathers, within ỳ same
borough, as heyre vnto his father, by
force of the custome, the whiche is called
borough English.

¶ Also in some boroughes by ỳ custome
the wife shal haue for her dower al the te
nementes, which were her husbandes.

¶ Also in some borough by ỳ custome, a Deuise by custome.
man may deuise by his testament, his lā-
des & tenemētes which he hath in fee sim
ple within the same borough at the time
of his death, and by force of suche deuyse
ye to whōe such deuise is made, after the
death of the deuisour, may entre into the
tenemētes so to him deuised, to haue and
to holde to him after the fourme & effecte
of the deuyse, without any iquery of seyn
therof to be made to him.

¶ Also though a man may not graūt nor
giue his tenementes to his wyfe duryng W. 5. E 4.
the couerture, for that, ỳ his wyfe and he
be but one person in the law, yet by suche
custome he may deuise by his testamente
his tenementes to his wyfe, to haue and
to hold to her in fee simpel, or in fee taile,
for terme of lyfe, or for terme of yeres,
so that suche deuyse taketh none effecte
but after the death of the deuysour.

¶ And yf man at dyuers tymes make

dyuers

Cap.10.

dyuers testamentes and dyuers deuy-
er.yet the laste deuyse and wyl,made
him,shal stande and abyde,and the o
be voyde.

¶Also by suche custome a man maye
uyse by his testamēt,that his executo
may alien and sel the tenementes that
hath in fee simple for certayne summ
money,to distribute for the soule,in t
case though the deuisour die seased o
tenementes,and the tenementes disc
vnto his heyre,yet the executours a
the deathe of theyr testatour maye sel
tenementes so deuised,and put oute
heyre,and therof make a feoffement,
enaelon,and estate by dede,or with
dede,to them to whome the sale is m

Howe a man maye make a lawful estate where he hath nothing in the lande.

¶And so may ye se heare a case,whe
man may make a lawful estate of l
and tenementes,and yet he hath no
in the tenemētes at the time of the e
made,and the cause is for that,that
custome and vsage is such.Nam con
tudo ex certa causa rationabili vsi
pitur communem legē.For a cust
vsed vpon a certain reasenable cause
reth the comon law.And note wel no
stonne is to be alowed,but suche cust
as hath ben vsed by title of prescript
ý is to say,frō tyme wherof is no m

¶But diuers opinyōs haue ben of

Lap.ii.

Maxime.

The opinio of the title of prescriptiō in time of mind.

cal minde, and of title of prescription, which is al one in the lawe, for some mē said, that the tyme of mynde shalbe, from time of limittacion in a writte of ryght, that is to saye, from the tyme of kinge Richarde the fyrste after the conquest, as is gyuen by the statute of west-minster the fyrst, for that a writ of right is the most hieste writ in his nature that may be. And in such a writ a mā may recouer his ryghte of the possessyon of his auncestors of the most auncient tyme that any man maye, by any writ by the lawe. In so much that it is giuen by ỹ sayde statute, that in such a writ none shalbe cōpelled to aske of the seisō of his auncestors any more longer tyme, then of the tyme of kinge Richard aforesayd, therfore this is ordeyned that continuance of possessyon and other customes and vsages vsed after the same tyme, is tytle of prescryption, and this is certayne. And other haue said that well and truthe it is, that seisin and continuance after the sayde lymyttacyon, &c. is a title of prescriptyon, as is aforesaid, and for the cause aforesaid. But they haue said that there is also an other tytle of prescripcion, that was in the common lawe, before any estatute of lymyttacyon of writtes. &c. And that was where a custome or vsage, or other thing

Westmin.i. Capi.38.

Capi.rr.

hath ben vsed, fro tyme wherof mynde man runneth not to the contrary.

Title of pre scripcion.

¶And they haue sayde ỳ this is proued by the pleading, where a man wil plead a tytle of Prescription of custome. In this case he shall saye, that suche custome hath ben vsed fro time, wherof the memory of men runneth not to the contrary, that is asmuche to say, when such a matter is pleded, that no mã then alyue hath hard one proofe to the contrary, nor hathe no knowledge to the contrary. And in so muche that suche tytle of Prescripcyon was in the commõ lawe, and not put out by none statute. Ergo it abydeth as it was at the common lawe, and the sooner in so much that the sayde lympytacion of a writ of ryght. &c. is of no longer tyme passed. Ideo quere de hoc, and mange whether customes and vsages haue such auncient boroughes.

Inquyre.

¶Also euery borough is a towne, but not to the contrary, more shalbe sayde of customes in the tenure of vyllenage.

¶Vyllenage. Cap. rj.

TEnure in villenage is most properly when a vyllayne holdeth of his lord, to whome he is vyllayne, certaine lãdes and tenementes after the custome of the maner, or els at the wyll of his lord, & to do to his lorde villayne ser-

uyce

vice, as to beare, bryng, and cary out the dung & fylth of the lorde, out of the cytie or maner vnto ꝑ lande of his lorde, there to lay it, cast it, & spreade it abrode vpō the land, and to doe such other maner of seruice. And some free tenaūtes holde theyr tenemētes after the custome of certaine manours by suche seruyces, and theyr tenure is called tenure in villenage, & yet they be no villaines. For no land holden in villenage or villaine landes, or any custome rising of the lāde shal neuer make free mā villain. But a villain may make free land to be villaine lande to his lord. ¶ As if a villaine purchase lande in fee simple or in fee tayle, the lorde of the villain may enter into the land, and put out his villayne and his heyres for euer, and after the lord if he wyl, maye let the same land to the villayne to holde in villenage. ¶ Also yf a feoffemente be made to a certayne perlō or persons in fee to the vse of a villain, or if a villaine or any other persons be enfeoffed to the vse of a vyllayne what estate so euer the vyllayne hathe in the vse, in fee tayle, for terme of lyfe, or yeres, the lord of the vyllayne may entre in all those landes and tenementes, lyke wyse as yf the vyllayne had bene alone seised of the demesne. And that is by the statute of Anno, 19. H. 7. Capi. 15.

Capi. xi

How some holde in villenage and be no vyllaynes.

cap.11.

¶ But if a free man wyl take anye lādes or tenementes to holde of hys Lorde by ſuche villayne ſeruyce, that is to ſaye, to paye a kyne to his lorde for his mariage, or for the maryage of his ſonne, or his doughter, then ſhal he paye ſuche a kyne for the maryage. &c. for that it is the folye of ſuch a free man to take in ſuch ſourme landes or tenementes, to holde of his lorde by ſuche bondage, yet that maketh not the free man a villayne.

Diuiſion of a villayn. T.1. c.4.

¶ Alſo euery villayne eyther he is a villayne by preſcription, that is to ſaye, he and his auncеſters haue bene villaynes tyme out of mynde, or he is villayne by his owne confeſſion in court of recorde.

¶ But if a free man haue dyuers iſſues, and after cōfeſſeth him ſelfe to be villain to an other in court of recorde, yet his iſſues which he hath before the confeſſion, be fre, but the iſſue, which he ſhal haue after the confeſſion. &c. ſhalbe villaynes.

What maner of lande purchaſed by a villaine is good.

¶ Alſo if a villaine purchaſe landes, and alyeneth the ſame landes to an other before his lord entre, then the lord may not entre. For it ſhalbe iudged his owne folye that he entred not when the lande was in his villaynes handes.

¶ Alſo it is of his other goodes, for if the villaine bye and ſel, or giue goodes to an other, before that the lord ſeaſe the goodes

then

then the lorde may not cease them, but if the lorde before any such sale or gifte cõmeth within the house of the villayne, where such goodes be, and there openly among the neyghboures clayme ẏ same goodes to be his, and so seiseth parcell of the same, in name of seisin of al ẏ goodes &c. This is sayd a good seisin in the law And the occupatiõ that the villayn hath after such claime in the goodes, shall be taken in the lawe in the right of the lord But if the king haue a villayne that purchaseth landes and alienethe before that the kinge entre, yet the kinge may enter into the lande, into whose handes so euer the lande cometh. Or yf the villayne bye goodes, and selleth them before that the kynge seyseth the goodes, yet ẏ king may seyse them, in whose handes so euer they be. Nulla nullum tempus occurrit regi. For no time renneth agaynste the kinge. Cap. xi.

A good seisyn

Maxime.

Also if a man let lande to an other for terme of lyfe, saunge the reuercyon to him, and a villaine purchaseth of the lessour the reuerciõ in this case it semeth ẏ the lorde of the villayn may incontinent come to the land, & claym the same reuercion, as lord of the same villayn, and by this clayme the reuercion is incõtinet in

When the lorde shal clayme reuercion or anoꝰ son purchased by his villaine.

Cap. 11

him for in any other fourme he may not come to the reuercion, for he may not entre vpon the tenant for terme of life, and if he ought to abide til after the deathe of the tenaunt for terme of life, then happily he might come to late. For peraduenture the villaine will graunte or alien the reuercion to an other in the lyfe of the tenaunt for terme of life.

¶ In the same maner it is where a villain purchaseth the auoulon of a churche ful of an incumbent, the lorde of the villayne may come to the said churche, and clayme the sayd auoulon. And by this clayme the auoulon is in him, for yf he ought to abide till after the deathe of the incumbent, and then preſet his clarke to the said churche. The in the meane time the villayne might alien the auoulon. &c & so put out the lorde frō his preſentacō

Diuiſion.

¶ Also there is a villayne regardant and a villaine in groſſe. Villaine regardant is if a man be ſeiſed of a manoure, to which a villaine is regardāt, and he that is ſeaſed of the ſaide manoure, or they whoſe eſtate he hath in the ſame manour haue ben ſeiſed of the ſaid villayne, and of his auncеſtors, as villaines regardāt to the manour, fro time out of minde.

Villayne regardaunt.

Villayn in groſſe.

¶ And villaine in groſſe is where a man is ſeiſed of a manour, to the which a vil-

layne

laine is regardant, and he graunteth the same villaine by his dede vnto an other, thē he is villain in grosse, & not regardāt. Capi. xi.

¶ Also if a mā and his ancestors, whose heire he is, hath ben seased of a villain & of hȳ ancestors, as villaines i gros, time out of minde, such be villaines in grosse.

¶ And note well, that of suche thinges which may not be graunted nor alienedwithout dede or fine, a mā that wil haue such thinges by prescription, may not otherwise prescribe but in him and his ancestors whose heire he is, & not by these wordes in him, in those, whose estate he hath, for that, that he may not haue their estate without dede or other writing, the whyche behouethe to be shewed to the court, if he wil haue any aduauntage of this, and bicause that the graunt and the alienacion of a villayn lieth not without dede or other writing, a man may not prescribe in a villain in grosse, without the winge of wryttinge, but in him selfe that claimeth the villain, and in hȳ ancestors whose heire he is. But of those thynges which be regardant or appēdant to a manour, or to other landes or tenementes, a man may prescribe, that he & they, whose estate he hath, were seised of the manour or of such thinges, as regardantes or appendauntes to the manoure, or to such

¶ fourme of prescripcion.

landes and tenemētes. &c. from time of mynde. And the cause is for this, that such a manour, landes, and tenemētes may passe by alienacīō without dede.

Regardant. ¶ And it is to wytte, that nothyng is ꝑmed regardant to a manour but a villayn.

Appendant. But certeine other thinges as auoulsons and comune of pasture. &c. be named appendantes to the manour, or to other landes and tenementes.

In grosse. ¶ Also if a man will in courte of recorde knowledge him selfe to be a villayn, that neuer was villaine before, suche one is a villayne in grosse.

Nyefe and wayue. ¶ Also a man that is a villayne is called a villayne, and a woman that is a villayne, is called a nief, as a mā that is outlawed is called an outlaw, and a womā that is outlawed is called a wayue.

Justi. lib. 1. tit de ingenuis. Sufficit autē liberam fuisse matrem. ¶ Also if a villaine take a free womā to wife, the issues betwene them shalbe villaynes. But if a niefe take a free man to husbād, their issues shalbe free. And that is contrarie to the lawe ciuile, for there it is sayde that partus sequitur ventrem.

Spurius. ¶ Also no bastard may be villaine, but if that he will knowledge him selfe to be a villayne in court or Recorde, for he is in the lawe. Quasi nullius filius, as the son of no man, for that he may be inheritour to no man.

Also

Also euery villaine is able and free to sue al maner of actiõs against euery per son excepte against his lorde, to whom he is a villayne, and yet certeine actions he may haue against his lorde. For he may haue against his lorde an actyon of appele, for the deathe of his Father or of his other auncestors whose heire he is. Capi. xi.

Also a meke whiche is rauished by her lord may haue appele of rape against hi.

When the villain shal haue action of dette or trespasse against his lorde.

Also if a villayn be made executour to an other and the lorde of the villain was indetted to the testatour in a certayne summe of money, the which is not paied in this case the villayne as executour to the testatour, shall haue an action of det against his lord, bicause he shal not recouer the dette to his proper vse, but to the vse of his testatour.

Also the lord maye not take out of the possession of such a villayne, that is executour, the goodes of the dead, and if he do, the villain as executour shal haue an action of trespasse against his lorde for the same goodes so taken, and recouer damages to the vse of the testatoure

But in all these cases it behouethe the lorde, which is defendante in suche actyons to make protestacion, that the playntife is his villayne, or elles the villaine shall be franchised thoughe the matter Protestacion.

be

Capi.xii.

be founde for the lorde, and agaynst the villayne, as it is sayde.

Triall of villenage.

¶ Also if a villayne sewe an actyon of trespas, or other action against his lord in one shire, and the lord sayeth, that he shall not be answered for that he is villaine regardant to his manour in an other shire, and the plaintife sayth, that he is frank and of free state, and no villaine that he shall be tried by the shyre, where the plaintife hath conceiued his action, and not in the shire, where the manour is, and that is in fauour of libertie, as it is adiudged. 40. Ed. the third. And for this cause was made a statute in the. ix. yere of Rychard the second, cap. ii. the tenure of which statute sewyth in such forme.

The wordes of the statute.

¶ Also for that where many villaynes and nieses, as well of great lordes as of other folke, as wel spiritual as temporall flee, and go into cities, townes, and places franchised, as the Cytye of London and other like places, and sayne dyuers sutes against their lordes, bycause they would make them selfe to be enfraunchised by the answere of their lord, it is accorded & assented, that the lordes nor none other shalbe forbarred of their villaynes bycause of theyr answere in the lawe.

¶ By force of which statu. if any villain will sue any maner of actiō to his owne

bi

Capi.xx.

in any shire where it is harde to trye against his lorde, his lorde may chose plead that the playntife is his villayn to make protestatiõ ẏ he is hꝭ villaine to pleade an other matter in barre, if they be at issue, & the issue be foũde the lorde, then the villaine is villaine he was before, by force of ẏ same estate. But if the issue be found for the villayne, then is the villayne franke and free, for that the lorde toke not at the beginnynge for his plee, that the villayne was his villayne, but toke it by protesta tion.

Also the lorde may not mayme his villayne, for if he maime his villain he shal for ẏ be endited at the kinges sute. And if he be of ẏ attainted, he shal for that make greuous fine & rãsome to the king. But it semeth, that the villaine shall not haue by the law any appele of mayme against his lorde, for in appeale of maime a man shal not recouer but hꝭ damages. And if the villaine in ẏ case recouer damages against his lorde, & hath therof executiõ, ẏ lord may take that, that the villaine hath in execution for the villayne, and so the recouery standeth voyde.

Wherfore a villayne maye not sue an appeale of mayme against hys lorde.

Also if ẏ villayne be demaũdant in an actiõ royal, or plaintife in an actiõ personal against his lord, if the lord wil plede

in

Cap.11.

in disabilitie of his person, he may make plaine defence: but shal defend but the wrong and ỹ force, and demand iudgement, if he shal be aunswered, shewe his matter by and by, howe he villayne, and demaunde iudgement he shall be answered.

Nō abilitie. Villayne.

¶ Also vi. maner of mē there be, against whom if they sue actions. &c. Iudgement may be asked, if they shalbe aunswered. One is where the villayne sueth action &c. against his lorde, as in case afore. The second is where a man is outlawed vpon an action of det or trespasse, or vpon any other action of enditemēt the tenaūt or the defēdāt may shew al the matter of recorde, and the outlawrye, and demaund iudgemēt if he shalbe aunswered, bycause ỹ he is out of the lawe to sue any action, during the time ỹ he is outlawed.

An outlawe

An alien borne.

The third is where an alyene ỹ is borne out of the alygiaunce of our soueraigne lorde the king, if such alien sue any action royal or personal, the tenaūt or defēdāt may say, that he was borne in such a countrey, which is out of the kinges alegiance and aske iudgemēt, if he shalbe āswered.

A man condemned in premunire.

The fourth is wher a man by iudgement is giuen against him vpon a writ of ỹ premunire facias. &c. is out of the kinges protection, if he sue any action, & the tenaūt

fendant shewe al the record against Cap.11.
he may aske iudgement if he shalbe
wered, for the law, & the kinges writ
the thynges, by which a man is pro-
& holpen, and so during the tyme ỳ a
in such case is out of ỳ kinges protec-
he is out of ỳ helpe & protecte by the
es lawe, or by the kinges writ. ¶ The
is, where a mā which is entred and
fessed into religion, suethe an action, ¶ religious
tenaūt or defendaūt may shewe, ỳ such man.
is entred into religiō in such a place
the order of saynt Benet, & is there a
ke professed, or in the order of fryers
nours, or preachers, and is there a
professed, and so of other orders
lygyon. &c. and aske iudgement if he
be annswered.

And the cause is for this, that when ¶ mā excom-
man entreth into religion, and is pro- nicate.
fessed, he is deade in the lawe. And hys
ne, or next cousyn incontinente shall
pyte hym, as well as thoughe he
deade in dede, and when he entreth
religion, he maye make his testa-
, and his executours, and they may
an actyon of dette due to hym be-
his entre into religion, or anye other
on that executours may haue, as yf
ere dead in dede. And if he make none
cutours whē he entreth into relygion
then

Cap.42. then the ordinarye may commytte the
mynistracion of his goodes to other
as yf he were deade in dede. The.
where a man is accursed by the lawe
holye church, and he sueth an action
all or personall the tenaunt or defend
may pleade, that he that sueth is ac
sed: and of this it behoueth hym to sh
the Bysshoppes letters vnder hys se
wytnessyng the accursyng and aske
ment, if he shalbe answered. &c. But
this case if the demaundaunt or playn
can not denye it, the wryt shall not ab
but the iudgement shalbe that the ten
or defendaūt shal goe quyte without
for this that whē the demaundaūt or pl
tife hath purchased his letters of abso
sion, & sheweth then to the court, he
haue a resommons or a reattachemen
vppon his originall, after the nature
his wryt. &c. but in the other fyue ca
the wrytte shall abate. &c. yf the ma
shewed, may not be gayne sayde.

B.11.M.2. ¶ Also yf a villayne be made a secu
prieſt, yet his lord may seaſe hi as his
laine, & seaſe hr goodes. &c. But it sem
that if the villayne entre into religion
is professed. &c. that the Lorde maye
take hym nor seaſe hi, for that he is de
in the lawe, no more then yf a free m
take a wyfe to his wife, the lord may

take ne lease the wyfe of ꝯ husband. But his remedy is to haue an action agaynst the husband, for that he toke his nyece to wife without his wyl and lycence. And so may the lorde haue an action against the soueraygne of the house, that taketh and admitteth his villayne to be professed in the same house, without lycence and wyl of his lorde. &c. and shall recouer his damages to the value of the villayne. For he that is professed monke. &c. shall be a monke, and as a monke shalbe taken for terme of his lyfe natural, except he be dispayned by the lawe of holy Churche, and he is holden by hys relygyon to kepe his doyster, and if the lord may take him out of his house thē he shoulde not lyue as a veray person, nor after his religion which houlde be inconuenient. &c. Lyvi.ii.

CLIKEWYSE yf there be warde The fauoure of religion.
eyne in chyualrye of bodye, and of land of a chylde within age, yf the chylde when he commeth to the age of fourteene yeares, entre into relygyon, and is professed, the Wardeyne hathe none other remedye, as to the warde of the bodye, but a wrytte of rauyshemente of warde agaynste the soueraygne of the house. And yf any beynge of full age, that is coulyn and heyre vnto the chylde entre into the lande, the wardeyne hathe

no

Cap.11.

no remedy as to the warde of the lād, b
cause that the entre of the heyre of t
chylde is lawful in suche case.

¶Also in manye dyuers cases the lo
maye make manumission and in frāc
synge to his byllayne.

Manumissio explicita.

¶Manumyssyon is properlye when t
lorde maketh his dede to his villaine
enfraunchise him by this worde Man
mittere, which is as much to saye, as
tra manum, et extra potestatem alteri
ponere, as to put hym out of the hand
and the power of an other. And for th
that by suche a dede the byllayne is p
out of the hande and power of his lor
it is called Manumissyon. And so euer
maner of enfraunchysyng made to a b
layne, may be sayd Manumission.

Manumiss. implicita.

¶Also if the lorde make to his byllay
an obligation of a certayne sum of m
ney, or graūt vnto him by his dede as
nuitie, or let him by his dede landes
tenementes for terme of yeares, the b
layne is enfranchised.

¶Also if the lorde make a feoffement
his villaine of any landes or tenement
by dede or without dede, in fee symp
fee tayle, or for terme of lyfe, or for ter
of yeres, and deliuereth vnto hym sey
this is an enfranchisynge, but yf ỳ lo
make to hym a lease of landes or te

esto hold at the wil of the lorde by dede
or without dede, this is no enfraunche-
sing, for ỳ he hath no manet of certayne
tyme, nor suertie of his estate, but that the
lord may put him out when he wil.

No enfraun-
chesing.

Also if a lorde sue agaynst his villayne
a pręcipe quod reddat if he recouer, or be
no sute after apparance, this is a manu
mission, for this that he may lawfully en
ter into the lande without suche suite.

In the same maner it is, if he sue a-
gaynst his villayne an action of dette, or
of accompt, or of couenant, or of trespas,
or such other, this is an enfranchesynge
&c. for this that he may enprison his vyl-
lain, & take his goods without such suite.

None enfra-
chesing.

But if the lord sue his villayne by ap-
peale of felonie, where he is endyted
therof before, this is no enfraunchesinge
of the villaine, thoughe the matter of the
appeale is founde agaynste the lorde, by
cause that the lord may not haue the vyl-
layne hanged without such suite. But if
the villayne were not indited of the same
felonie before the appeale sued agaynste
him, and after is acquited of the saide fe-
lonye, then he shall recouer damages a-
gaynst his lorde for the false appele. And
in thys case the villayne is enfraunche-
sed bycause of the iudgement of damage
that was geuen to him agaynst his lord.

And moze cales and matters there be, by the which a villayne maye be enfranchysed against his lozde. Sed de illis quere.

Irrita prescriptio.

¶ Also if a lozde of a manoure wyll prescribe, that it hath bene accustomed within his manour time out of mind, that every tenaunt within the same manoure that marieth his doughter to anye man without licēce of the lozd of the manoure shall make fyne to the lozde foz the tyme being, this prescriptiō is void. For none ought to make suche fines but onely villains foz euery fre mā may frely marye his dought to whō it pleaseth hi & his dought And bycause that this prescripcion is against reasō such prescripcion is voyde.

The custome of Gauelkynde.

¶ But in the shire of kent, of landes and tenementes holden in Gauelkind, where by the custome it hath ben vsed time out of minde that the childzen males ought euenly to inherite, whiche custome is allowable foz this that it is with some reason, bycause that euery son is as great a gentilman as the elder son, and by reason that moze great honour and valour shall growe to suche childe, then if he had nothinge by his auncestors, where peraduenture he might not so growe. &c.

The custome of borough englishe.

¶ Also wher by custome called borough englishe in some borough the yonger son shal enherite al the tenementes. &c. The

custom

tuthyme also stādeth with reasō, bycause that the yōger son if he lacke father and mother, bicause of his youg age may lese of al his brethren helpe him selfe. &c. But if a mā will prescribe, that if anye cattell were vpon the demesne of his manour there doyng damage, that the lord of the manour for the time beinge hath vsed to distrayne thē, and the distresse to retayne till fine were made to him for the damages at his will, this prescription is voyd bicause it is against reason, that if wrōg be done to a man, that he therof shuld be his owne iudge, for by suche waye if he had damage, but to the value of an halfe peny, he myght assesse and haue therfore an. C. li. which shuld be against al reason and so suche prescription, or anye other prescription vsed, if it be agaynst all reason ought not nor will not be allowed be the iudges. Quia malꝰ vsꝰ abolendꝰ est.

Iniqua prescriptio.

Rentes. Cap. xiii.

Dyuision Rent seruice.

THre maner of rentes there be, that is to saye, rent seruice, rent charge & rent secke. Rent seruice, is where man holdeth his lād of his lord by seal and certaine rent, or by homage, seal & certayne rent, or by other seruices & certaine rent, & it rent seruice at any day

that it ought to be payed, be behynd, the lord may distreyne for the comon right.

¶ And yf a man nowe wyll geue landes or tenementes to an other in tayle, yelding to him certayne rente by yere, he comon right may distreyne for the rent behinde, thoughe that suche gifte was made without a dede, bycause that such rent is rent seruice.

¶ In the same maner it is, if a lease be made to a mã for terme of his life, or anothers lyfe, yeldinge to the lessoure certayne rent, or for terme of yeres yelding certaine rent. &c. but in suche case where a man vppon suche a gyfte or lease wyll reserue to hym rent seruice, it behoueth that the reuercyon of the landes and tenementes be in the donoure or in the lessour, for if a man will make a feoffement in fee, or wyll giue landes in tayle, the remainder ouer i fee simple wout a dede reseruing to him certain rẽt, such reuercion is in the donour, and such a tenant holdeth his land immediatly of the lord of whom the donour held.

The common lawe before the statute.

¶ And this is by force of ỹ statute of westminster. 3. cap. 1. Quia emptores terrarum for before ỹ same sta. if a mã made a feffement in fee simple by dede or wout dede yelding to him and to his heires certain rent, this was rent seruice, & for this

might distreyne of common right. And if he made no reuercion of any rent, nor of any seruice, yet the feoffee helde of the feoffoure by such seruices as the feoffour held ouer his lorde next aboue.

¶ But if a man by dede indēted at a day make such a gifte in the taile, the remainder ouer in fee or a lease for terme of lyfe the remainder ouer in fee, or a feoffemēt in fee, & by the same indenture reserueth to him and to his heires a certayne rēt, & that if ẏ rent be behinde, ẏ it shal be leful to him and to his heires to distreyne. &c. Such rent is rente charge, bicause suche lādes and tenemētes be charged of such distresse by force of the writinge onelye, and not of common right. Rente charge.

¶ And if such a man in such a dede indēted, reserue to him & to his heires certain rent, wout any such clause sette or put in the dede. ẏ he may distrayn. &c. then such rent is rent secke, bicause ẏ he can not distrayne to haue the rent, if it be denied by same distres and if he was neuer seised in this case of the rent, he is wythout remedye, as shalbe sayde hereafter in this chapiter. Rente secke.

¶ Also if a man sealed of certayne lande graut by his dede, word or by indēture a yerely rēt issuing out of ẏ same lād to an other i fee siple, or i fee tayl, or for terme

Capi.12. of life.&c.with clause of distresse.&c.then this is rent charge,and if the graunte be without clause of distresse,then it is rent secke.And note wel,that rent secke,Idem est quod redditus siccus,for that,that no distresse is incident to it.

Annuitie. ¶Also if a man by his dede,graunt rent charge to an other,and the rent is behind the grauntee may choyse if he wyl sewe a wrytte of annuitie of it agaynst the grauntour,or distrayn for the rent behind,and the distresse to withhold,tyll he be of that payed.But he may not do and haue both togyther, for if he recouer by wrytte of annuitie,the the land is discharged.And if he sewe not a wrytte of annuitie, but distrayne for the arrerages, and the tenaunt seweth a Replegiare.&c. and the grauntee auoweth the takynge of the distresse in the lande.&c.in court of record, then is the land charged, and the person of the grauntour discharged of an action of annuitie.

Estoppel. ¶Also if a man wyll that an other shall haue rent charge ill atinge out of his landes,but he will not that his person shall be charged in anye maner by a wrytte of annuitie,then he may haue such a clause in the ende of his dede. Prouiso semper quod presens scriptum nec aliquid in eo specificatum,non aliqualiter se extendat

ad onerandum personam meam, p hꝛe-
ne vel actionem de annuali redditu. Sed
tantummodo ad onerandū terras ⁊ tene
menta prædicta, de annuali redditu præ-
dicto, then is the lande charged, and the
person of the graūntour discharged.

¶Also if a mā make such a dede in suche
maner, that if A. of B. be not yerely paid
at the feast of chꝛistmas foꝛ terme of his
life, xx, s. of lawefull moneye, that then
it shalbe lefull to the sayde A. of B. to dy-
strayne foꝛ it, in the maner of C. ⁊c. this
is good rente charge, bycause that the
manour is charged with the rēt by way
of distres, ⁊ yet the person him selfe that
made such a dede, is dyscharged in this
case of an actiō of annuitie bycause that
he graūted not by his dede any annuitie
to the sayde A. of B. but graunted onely
that he may distrayne foꝛ his annuytye.

¶Also if a man haue a rente charge to him and to his heires, issuing out of cer-
tayne lande, if he pourchase any parcelle
of the lande, to him and to his heyꝛes, all
the rent is extinct, and the annuitie also,
bicause that rent charge may not in such
maner be appoꝛcioned, but if a man that
hath rent seruice purchase percell of the
lande, whereof the rente is goinge oute
this shal not extincte all, but foꝛ the poꝛ-
cio, foꝛ the rent seruice in suche case may

Extinguish-
ment.

Capi.12.

be appoꝛcioned and ſhall be appoꝛcioned after the value of the lande. But if a tenante holde his lande by ſeruice, to yelde to his loꝛde yereli at ſuch a feaſt an hoꝛſe oꝛ an hauke, oꝛ ſuche thinge ſemblable, in ſuch caſe the loꝛde purchaſe parcell of the land, the ſeruice is gone bycauſe that ſuche ſeruice may not be ſeuered noꝛ appoꝛcioned. ¶ But if a man hold his land of an other by Homage, Fealtie, and Eſcuage, and by certayne rente, if the loꝛde pourchaſe parcel of the lande. &c. in ſuch caſe the rent ſhall be appoꝛcioned, as is afoꝛeſayde. But yet in this caſe the Homage and fealty abideth hole to the loꝛde, foꝛ the loꝛde ſhall haue the Homage and fealtie of his tenant foꝛ the remnant of y landes and tenementes holde of him as he had be befoꝛe. &. foꝛ this that ſuche ſeruices be no annuel ſeruices, & maye not be appoꝛcioned. But the eſcuage may ſhall be appoꝛcioned after the quantitie and rate of the lande.

Rent charge appoꝛcioned.

¶ Alſo if a man haue a rent charge, and his father purchaſeth parcell of the tenemētes charged in fee and dyeth, and that parcell deſcendeth to his ſonne that hath the rente charge, now this rente charge ſhalbe appoꝛcioned after the value of the landes as it is afoꝛeſaid of rent ſeruice becauſe that ſuche a poꝛcion of the lawe

purcha-

purchased by the Father commethe not to the sonne by his owne dede, but by discente and course of the lawe.

¶ Also if there be lorde and tenaunt and the tenaunt holdeth of his lorde by Fealtye and certaine rent, and the lord grauteth the rente by his dede to another. &c. kepinge to him the fealtye, and the tenaunte attourneth to the graunte of the rente, nowe suche rente is rente secke to the grauntee, for thys that the tenementes bee not holden of that graunte of the rente, but be holden of the Lorde that receyued to him the fealtie.

¶ And in the same maner it is where a man holdeth his land by homage, fealty and certayne rente, if the lord graũte the rente, saunge to hym the homage, such rent after such graunt is rent secke.

¶ But where landes or tenemẽtes bene holden by homage, fealtie, and certayne rente, if the Lorde wyll graunte the Homage of his land, by his dede to an other saynge to hym the remnaunte of the seruices, and the tenaunte attourneth to hym after the fourme of the graũt, now in this case the tenaunt holdethe his lande of the graunte and the Lorde that grauteth the homage, shal not haue but the rent as rent seck, and shal neuer distreyne for the rẽt, for this that neyther

homage nor fealtie, nor escuage maye be
said seck, for no such seruice may be said
seck, for he that hath or ought to haue of
his tenant homage, or fealtie, or escuage
may of common right distraynye for it if
it be behind. For homage, fealtie, and es-
cuage ben seruices, by whiche lādes and
tenemētes be holden &c. and be such that
in no maner may be takē but as seruices.

¶ But otherwise it is said of rente, that
was ones rent seruice, for this that when
it is seuered by the graunte of the lorde,
frō that other seruices, it may not be said
rēt seruice, for this that he hath not to it
fealtie, which is incidēt to euery maner
of rente seruice, and for this it is sayde
rent secke, if the lord can not graūt such
rent with distresse as it is sayd.

¶ Also if a man let lande to an other for
terme of life, reseruing to him certayne
rent, if he graunt the rent to an other by
his dede, sauing to him the reuercyon of
the lande so letten. &c. suche rente is but
rent secke, for this is that the graunte hath
nothinge in the reuercion of the lande.
But if he graūt the reuercion of ỳ lād to
an other for terme of life, and the tenant
attourneth. &c. then hathe the graunt the
rent as rent seruice, bicause he hathe the
reuercion for terme of life.

¶ And so it is to be vnderstand, ỳ if a mā

gyue

giue landes or tenementes in the tayle, reseruing to him and his heires certayn rent, or lette lande, for terme of lyfe, reseruing certayne rente, if he graunte the reuercion to an other, and the tenant attourneth, all the rent and seruice passeth by the word of the graunt of reuercion, for this that al the rent & seruice in suche case be incidentes to the reuercion, and passe by the graunt of the reuercio. But though he graūt the rent to an other, the reuercion passeth not by such graunt, &c. And so note wel the diuersitie, And it is holden. P.12. E.4. But it is adiudged An.26.li.assisarum, where as the seruyces of the tenant in tayle were graunted that this was a good graunte, yet notwithstanding the reuercion remayneth. Nota

Also if there be lorde, mesne, and tenant, and the tenāt holdeth of the mesne by the rent of fyue shilinges & the mesne holdethe ouer by.xii.d. if the lorde aboue purchase the tenancy in fee, then the seruice of the mesnaltie is extincte, for this that when the lord aboue hath the tenancie he holdethe of the lorde nexte aboue him. And if he ought to hold it of hi that was mesne, then he shulde hold one selfe tenancye immediatlye of dyuers lordes, which shuld be inconuenient, & the lawe wil soner suffer a mischiefe then an incō- Maxime.

uenyence

nuenience. And for this the seignory of the mesnaltie is extinct, but in so much that the tenant held of the mesne by.v.s. and the mesne held but by .xii.d. so that he had more aduauntage by.iiii.s. then he payde to his lord, he shal haue the said iiii.s. as a rent secke yearelye of the lord that purchased the tenauncy.

Remedy. Also yf a man that hathe rente Secke is once seised of anye parcell of the rente and after if the tenaunt wil not paye the rent that is behinde, this is his remedy. It behoueth him to go by him selfe, or by an other to the landes and tenementes, wherof the rent is illuinge, and thereto demaund the arrerages of the rente, and if the tenant deny to pay it, this denieng is a disseisin of the rent. Also if the tenāt at the tyme be not ready to pay it, this is a denieng and a disseisin.

Also yf the tenaunt nor none other be dwelling vpon the landes or tenemētes to pay the rente when he asketh the arrerages. &c. this is a denieng in law, and a disseisin in dede, and of such disseisins he may haue an assise of nouell dysseisin against the tenāt and recouer the disseisin the rēt and the arerages and his damages and costes of his wrytte, and of his plee. &c. And if after suche recouerye and execution had, the rent be an other tyme

denyed

denied him, then he shal haue a reddisseisin, and recouer double damages,

¶ And it is to be had in minde, that this name assise is equinoctii. For sometime it is taken for a Iurye, for in the beginning of the recorde of assise of nouel dysseisin, the record shall begin thus. Assisa ben recogñ. &c. which is to saye, that Iuratores ben recogñ And the cause is for this, that by the writte of assise, it is commaunded to the shyriffe, quod faciat .xii. liberos et legales homines de vicineto &c. videre tenementũ illud, et nomina eorum inbreuiari, et quod sum eos per bonos sum, quod sint coram iusticiariis. &c parati inde facere recogñ.

Assisa equinoctium.

¶ And for this that by force of suche an originall writte a panell by force of the same writte ought to be returned .&c. it is sayde in the beginning of the record i assise. Assisa ben recogñ,

¶ Also in a writte of ryght is commonly sayde, that the tenaunt maye put him in god, and in the great assise.

¶ Also there is a writte in the Regester called. De magna assisa eligenda. so is this a good proofe, that thys name assyse sometime is put for the Iurie, and sometime it is taken for al the writte of assyse and after that entent it is most properly and most commonly taken, as a writ of

assise

Cap.12.

assise of nouel disseisin is taken for al the writte of assise of nouel disseisin.

¶ In the same maner assise of common pasture is taken for al the writte of assise of common pasture, and assise of mordauncestre is taken for all the writ of assise of mordauncestres, and assise of darreyne prȩsentmente, is taken for all the writte of assise of darreyne prȩsentement: but it semeth, that the cause is, why such writtes at the beginning were called assises, for this ỹ by euery such writte it is commaunded to the shiriffe, that he sommon. xii. ꝛc. which is as much to say, that ge ought to sommon a Jury. ꝛc.

¶ And sometime assyse is takē for an ordinaunce for to set certayne thinges in a certayne rule and disposicion, as an ordinaunce that is entred in the anciēt estatutes is called assisa panis et seruicie.

Reisin of rent secke.

¶ Also if there be lorde and tenaunte and the lord graunteth his rente of his tenaunte by dede to an other fauntge to him, the other seruetes, and the tenaunt attourneth, this is a rente secke, as is afore sayde. But if the rent be denyed him at the nexte daye of payment he hath no remedy, for this that he hadde not there of any posession. But if the tenaunte when he attournethe to the graunte, or after wil giue a peny or an halfepeny to

the

the graunt in the name of seisin of ỳ rent
therof after at the nexte day of payment
therent be denied hym, he shall haue as
sise of nouell disseisin.

¶ And so it is, if a man graunte by his
dede a yearelye rente issuinge oute of his
lande, to an other. &c. If the grauntoure
then after paye to the graũtee a peny or
an halfepeny in the name of seisin of the
rente, then after the firste daye of paye-
mente the rente be denied, the grauntee
may haue assise or els not.

¶ Also of rẽt secke a mã may haue assis
of mortdauncestor, or a writte of ayell, or
cousinage and al other maner of actiõs
reals, as the cause lieth, as he maye haue
of any other rent.

¶ Also there be three causes of dysseisyn of rent seruice, that is to saye rescous, re-
pleuin and encloſoure. Thre maner of disseisin

¶ Rescous, is when the lord distrayneth
in the lande holden of him for his rente
behind, if the distresse be rescued frõ him
or the lord come vpon the land, & would
distrayne, and the tenaunte or an other
man wil not suffer him. &c. Rescous.

¶ Repleuin, is when the lorde hathe dy-
strayned, and repleuin is made of the dy
stresse by writte, or by playnte. &c. Repleuin.

¶ Encloſoure, is if ỳ landes & tenemen-
tes be so encloſed, ỳ the lord may not ebe Encloſoure.
within

Cap.12. within the landes and tenementes for to distreyne. And the cause why suche thynges so done be disseisins made to the lorde is for that, that by such thynges the lorde is disturbed of the meane, by whiche he ought to haue had and come to his rent, that is to say of the distres.

¶ And foure causes be of disseisin of rent charge, that is to saye, rescous, repleuin enclosour, and denier, for denyenge is a disseisin of rent charge, as it is aforesayd of rent secke.

¶ And two causes be of disseisin of rent secke, that is to say enclosour and denyer.

¶ And it semethe that there is an other cause of disseysyn of all the thre rentes aforesayde, that is to say, when the lorde is goinge to the lande holden of him, for to distreyne for the rente beinge behinde, and the tenaunte hearinge this encountreth him, and forstalleth him the waye with force and armes, and manaceth him in such fourme that he dare not come to the lande for to distreyne for his rent behinde. &c, for doubte of deathe or bodely hurt, this is a dysseisyn, for this that the lorde is disturbed of the meane, whereby he ought to come by his rent, and so it is if by such forstallinge and manacyng, he that hathe rente charge, or rente secke, is forstalled, or dare not come to the lande

to aske the rent behinde.

¶ Thus endeth the second booke.

PARCENERS. Cap.i.

Parceners be .ii. maners that is to saye, parceners after the course of the cõmon law, and parceners after the custome. Diuision. Parceners by the cõmon lawe.

¶ Parceners after the course of the common lawe be, where a man or a woman seased of certayne landes or tenementes, in fee symple, or fee tayle, hathe none issue but doughters and diethe, and the tenementes discende to the doughters, and the doughters enter into the landes and tenementes so to them discended, then they be called Parceners, and be but one heyre to theyr ancestor. And they be called parceners, for this, that by the writte that is called breue de participatione facienda. The lawe will constrayne that Particyon shall bee made amonge them. And if there be two doughters, to whome the lande discendethe, then they be called two parceners and if there be thre doughters, then they be called thre parceners, and .iiii. doughters foure parceners, and so forth.

¶ And if a manne sealed of landes in fee simple, or in fee tayle die without issue of his body begotten, and the tenementes discende to his sisters, they be called parceners, as is aforesayde. In the same manner it is, where he hath no sisters, but the lande discendeth to his auntes, they be parceners: but if a man haue but one doughter, she may not be sayde parcener but she shalbe called doughter and heire.

Diuers maners of parteners

¶ And it is to wytte, that partycyon betwene parceners may be made in diuers maners, one is whē they agree to make partition, and make partition of the tenementes, as yf there be two parceners to deuide betwene them the tenementes in two partes, euery part by him selfe in seueraltie of euen value, and if there be thre parceners to deuide the tenementes in thre partes in seueraltye.

¶ An other partition there is, to chose by agrement betwene them, and certayne of theyr frendes to make the partition of the landes and tenemētes in the fourme aforesayde.

¶ And in such cases after such partition the elder doughter shall chose fyrste one of the partes so deuided, whiche she will haue for her parte, and then the second doughter after her, her parte. &c.

So be, that there be many sisters, &c.

be not that they ne be otherwyse agreed
betwene them, for it maye be agreed be-
twene them, that one of them shall haue
such tenementes, and an other such tene
mentes, &c. wout any such former election
and the part that the elder sister hathe
is called in latine enitia pars, but yf the
parceners agree, that the elder sister shal
make partition of the tenementes in the
forme aforsayd, and if she do, then it is
sayde, that the elder sister shall chose last
her parte, after eche of her other sisters.
An other partition and allottynge
there is, as if there be. 4. parceners, and
after such partition made of the landes,
every part of the lande is by it selfe writ-
ten in a litel scrowe, and is couered al in
wore, in maner of a lytell ball, so that no
man may se the scrowe, and then the. iiii.
balles of wore be put in a bonet to kepe
in the handes of an indifferent man, and
then the elder doughter first shal put her
hande in the bonet, which shal take a bal
of wore and the scrowe within the same
ball for her parte, and then the second si-
ster shall put her hande in the bonet, and
shall take an other, and so then the thirde
after the third ball, &c. And in this case
behoueth eche of them to hold them to
their chaunce and allottement.

Enitia pars.

Also an other partition there is, as

if there be foure parceners, and they
not agre, that partition shalbe made
twene thē, then one of them may haue
wryt de participatione facienda, aga
the other thre sisters, or two may ha
writ of participatione facīda against
other two, or the third of thē maye h
a writ of participatione facīda, agay
the fourth of theyr election.

Judgement. ¶ And when Judgement shall be gy
vppon suche a writte, the Judgeme
shalbe such, that partition shall be m
betwene the parties, & the shiriffe in
proper person shall go to the landes
tenementes. &c. and that he by the oth
twelue trew men of his Bayliwyke
shal make partitiō betwene the parti
the one parte of the same landes shall
assigned to the plantife, or to one of
plaintifes, & an other part to an other
not makinge mencion in the iudgem
of the eldest sister more then of the y
gesse. And of the partition that the S
riffe hath thus made, he shal make n
to the Justices. &c. vnder his seale,
the seales of the. xii. &c.

¶ And so in this case maye ye s
the elder sister shal not haue the firs
tion. &c. but the shyriffe shall assygne
parte that she shall haue. &c.

¶ And it maye be, that the shyriffe
assig

assigne first a parte to the yongest syster and the laste parte to the elder. And note wel, that partition by agremēt betwene parceners, maye by the lawe be made amonge them, as wel by worde without dede, as by dede. 31.E.4.

¶ Also if two meses dyscende to.ii. parceners, and the one mese is worthe by yere xx.s. and that other but.x.s. by yeare, in this case partitiō may be made betwene them, in such fourme, that the one parcener shal haue the one mese, and the other parcener shall haue the other mese, & her that shall haue the mese of.xx.shylynges and his heyres, shal paye a yerely rent of v.s. issuinge oute of the same mese, to the other parcener, and to her heires for euer because that euery of thē shal haue euen in value, & such partition made by word is good inough, And the same parcener that shal haue the rent of fiue.s. and his heyres maye distrayne for the rent of cōmon right in ỳ same mese of the value of xx.s. if the rent of.v.s. be behinde at any time to whose hādes soeuer ỳ same mese commeth, though there was neuer wryting made of it betwene thē of such rent. Rent charge.

¶ In the same maner it is of partycyon of al maner of landes and tenemētes. &c where suche rente is reserued to one or diuers parceners vppon suche partycyon Distreyned by common reyghte.

Capi.a

cion.&c. but suche rente is not rente fee nice but is rēt charge of common right had & reserued for egaltie of the partici.

¶ And note wel, that none be called parceners by the common lawe, but women or the heyres of women, and which come by landes and tenementes by discent, for if sisters purchase landes or tenementes of this, they ben called tointenautes, and not parceners.

¶ Also if two parceners of lande in fee simple make partition betwene them.&c. and the parte of that one is more worthe than the parte of the other; yf they were at the time of partitionof full age, that is to saye of.xxi.yere, then the partitiō alway shal abide, and neuer be defeted; but if tenementes, wherof be made partitiōs be to them in fee tayle, and the part that one hath is much better in yerelye value then the part of the other, how be it that they be excluded during theyr liues to defete the partition, yet if the parcener that hathe the leste parte in value hathe issue and diethe, the issue may dyssagree to the partition, and entre and occupie in common that other parte that was allotted to her aunt, and so the aunte maye entre and occupie in common that other parte allotted to her sister, as no partition there of had bene made.&c.

Also

¶Also if two parceners of tenemẽtes in fee take husbãdes, & they and their husbandes make partition betwene them if the parte of the one be lesse in yerely value then the parte of that other durynge the lyues of the husbandes, the partition shalbe in his force and strẽgth, & thoughe that it shal stand during the lyues of the husbandes, yet after the death of the husbãd, the wife ỹ hath thẽ lesse part. &c. may enter in her sisters part, as is aforsaide & defete the partition, but if the partitiõ so made betwene the husbandes, was such that eche part at time of the lottemente made, was egal of yereli value, and without incũbrauunce of former titles, thẽ it may not after be defeated in such cases.

¶Also if there be two perceners and the yonger of them be within the age of. xxi. yere, and partition is made betwene thẽ so that the part that is allotted to the yõger, is lesse in value then the part of that other. In this case the yonger durynge the time of her nonage, and also when she commeth to ful age of. xxi. yere, may enter into the portiõ to her sister allotted &c. and defete the partition. But suche a parcener ought to take hede, whẽ she cõmeth to ful age, that she ne take to her owne vse al the profites of ỹ tenementes to her allotted, for then she agreeth to the

Cautl

Cap.1. partycion at suche age, in which case the partycion shall stande and abyde in his force and strength.&c. But peraduēture the profites of the halfe thee maye take leauyng the profites of the other halfe to her syster.

Indulgencia iuris in pupillos. ¶And it is to wit, that when it is sayde males & femals be of ful age, that shalbe vnderstande of the age of.xxi. yere, for if any feoffement, or graunt, release, confirmation, obligacion, or anye other writing before any such age be made by any of them.&c. or that anye within suche age be bayliffe or receyuer to any man. &c. all is for nought, and may be auoyded.

¶Also a man before such age may not be sworne in no iury nor in no inquisycion.

¶Also if anye landes or tenementes be gyuen vnto a man in the tayle, whyche hath as much lande in fee simple, & hath issue two doughters, and diethe, and the doughters make partycion betwene thē, so that the lādes in fee simple be allotted to the yonger doughter, in alowance of the other landes or tenementes tayled, allotted to the elder doughter, yf after such partycion made, the yonger doughter alieneth the lande in fee symple to another in fee, and hath issue a son or doughter, and dyethe, the yssue maye entre the tenementes tailed, and them to hold

in propertye with theyr aunte.

¶ And this is for two cauſes, one is for that the iſſue may haue no remedy of the land alienedby his mother, for that, that the lande was to her in fee ſimple, and in ſo muche that ſhe is one of the heyres in the tayle, and hath nothing recompenſed of that, that to her belongeth of the tenementes tayled. For this cauſe it is reaſon, that ſhe haue her purpart of the tenementes in tayle, and namely when ſuch partition maketh no diſcontinuaunce of the tayle, as ſhalbe ſayde hereafter in the chapiter of diſcontinuaunce. But the cõtrary is holde. M.10. H.6. that is to ſaye, that the heyre may not enter vpõ the parcener, that hathe the lande tayled, but is put to his formedone.

Two cauſes.

¶ An other cauſe is for that, that it ſhall be arected the folye of the elder ſiſter, that ſhe wold ſuffre or agree vnto ſuche partition, where ſhe mighte haue had, if ſhe would, halfe the lande in fe ſymple, and halfe of the tenementes in the tayle for her purpartye, and ſo to be ſure without damage, &c.

¶ Alſo if a manne ſeyſed in fee of a ploughe lande by iuſt title, diſſeaſethe an infante within age, of an other ploughe land, and hath iſſue two doughters, and diethe ſeaſed of bothe theſe ploughe

landes, the infant then being within age and the doughters entre and make partition, so that the one ploughe lande is allotted to the purpart of ỹ one, as percase to the yonger sister in alowaunce of the other plough lande that is allotted to the purpart of ỹ other, if that after the infant entreth in the plough lande, of the which he was disseised vpon the possessiõ of the parcener, that hath ỹ same plough lande thẽ the same parcener may entre into the other plough lande, that her sister hathe and holdeth in percenery with her, but if the yonger sister aliene the same plough lande to an other in fee simple, before the entre of the infant, & after the childes entre vpõ the possession of the alien, thẽ she may not entre in the other plough lande for this ỹ by her alienacion she hathe vterly dismissed her selfe to haue any part of the tenemẽtes as parcener. But if the yõger sister, before the entre of the infãte make therof a lease for terme of peres or for terme of life, or in fee tayle, saning ỹ reuercion to her, & after the childe entreth there peraduenture it is otherwyse, for this that she dismissed not her selfe of all that, that was i her, but hath reserued to her the reuercion, and the fee simple. &c.

¶ Also if there be. iii. or foure perceners that make partició betwene them, if the

parti-

part of one pcener be defeted by such lau
full entre, she may entre and occupie ꝯ o-
ther landes with all the other parceners
and compel them to make newe partiçiõ
of the other landes betwene them. ⁊c.

¶ Also if there be two parceners, and the
one taketh an husband, and the husband
and the wife haue issue betwene thẽ. And
the wife dieth, and the husband holdethe
him in the halfe as tenant by the curtesi:
In this case the parcener that suruiueth
and the tenant by the curtesy maye well
maye partition betwene them. ⁊c.

¶ And if the tenant by curtesye wyll not
agree to make partiçiõ, thẽ the parcener
that suruiueth, may haue against the te
nant by the curtesy a writte de participa-
tione facienda. ⁊c. and cõpel him to make
partition. But if the tenant by ꝯ curtesy P.5.E.3.
wyll haue partition made betwene them
and the parcener that suruiueth wil not
haue it, then the tenaunt by the curtesye
shal haue no remedye for to haue partyc-
tion, for he maye not haue a writ de par-
ticipatione facienda, for this that he is
not parcener, for such a writ lieth for par
ceners onely. And so ye maye se, that the
writ de participatione facienda lyethe a-
gaynst tenant by the curtesye, ⁊ yet hym
selfe may not haue such a writ.

¶ Parceners by ꝯ custome. Cap. ii.

Par-

Gauelkind

PArcener by the custome be, when a man seased in fee simple, or fee tayle of landes or tenementes that be of the tenour called Gauelkind, within the shyre of kente hathe issue diuers sonnes and dieth, then such landes and tenementes shall discende to all the sonnes by the custome, and they euenly shall inherite, and make partiçiõ betwene them by the custome, as females do, and a wrytte de participatione facienda, lieth in this case as betwene females, but it behoueth in the declaracion to make mencyon of the custome. Also suche custome is in other places i England, and also such custome is in North Wales.

Partitio facta a superioribus.

¶ Also there is an other partition that is of an other nature, and of an other fourme then any of the partitions aforesayde be, as if a man seased of certayne lãdes in fee simple hath issue two doughters and the elder is maried, and the father giueth parcel of the same landes to the husband with his doughter in frankmariage, and dieth seysed of the remenãt the which remenant is of more and greater value by yere, then be the landes gyuen in franke mariage. In this case the husband nor the wife shall haue nothing for their part of the sayd remenaunt, but yf they will put their landes gyuen in franke

franke mariage in hochpot, with the re-
menant of the lande with her ſiſter, and
if they wil not do ſo, then the ponger ſy-
ſter may hold and occupie the ſame rem-
nant, and take to her the profytes onely:
and it ſemeth that this woꝛde hochpot is
in Engliſhe a pudding, foꝛ in ſuch a pud
dinge is not comomnlye put one thynge
onely, but one thing with an other tog y-
ther, and foꝛ this it behouethe in ſuche
caſe to putte the landes gyuen in franke
mariage with the otꝛer landes in Hoch-
pot, if the huſbande, and the wyfe wyll
haue any part in the other remenant. &c. Hochepot

¶ This woꝛde Hochpot is but a terme
of ſimilitude. And is as much to ſaye, as
to put the landes giuen in franke mary-
age, and the other lãdes in fee ſymple to
gether. And this is to ſuche entente, to
knowe the value of al the landes, that is
to ſaye, of the landes giuen in franke ma
riage and the remnant that was not gy-
uen, and then partition ſhall be made in
this foꝛme that enſueth.

¶ As putte caſe a man be ſeaſed of. xxx. a
cres of lande in fee ſimple, euery acre in
value. xij. d. by the yere, which hath iſſue
ii. doughters, and the one is couert barõ
and the father giueth. x. acres of the. xxx.
acres to the huſband with his doughter
in franke maryage, and diethe ſeaſed of

the

Cap. 2.

the remenante, then the other sister [illegible] enter in the remnant, that is to saye, [illegible] the twentie acres, and shall occupye [illegible] her owne vse, excepte the husbande and the wife wil put theyr ten acres giuen to them in franke mariage withe the other xx. acres in Hochepot, that is to saye, together, and then when the value is knowen of euery acre, that is to saye, euery acre is yerely worth .xii. d. then the partition shalbe made in such forme, that is to say, that the husbād & the wife shal haue aboue the .x. acres giuen to thē in franke mariage .v acres in seueraltie of the .xx. acres, and that other syster shal haue the remenant, that is .xv. acres of the .xx. acres ỹ the husband & the wyfe had by the gift in frāke mariage and the other .v. acres of the .xx. acres, the husband and the wife hath as much in yerelye value as ỹ other sister hath, and so alwaye vpō such partition the landes giuen in franke mariage abide to ỹ donees, or to their heires after the fourme of the gyfte. For if the other parcener should haue nothinge of this that is giuen in franke mariage, of this should folowe an inconuenience, and a thinge agaynst reason, that is to saye, the franke mariage should be made voyd. which the lawe wil not suffre. &c.

Nota.

¶ And the cause why the landes gyuen

in

in franke mariage, ſhalbe put in hochpot is, that when a man giuethe landes and tenementes in franke mariage with his doughter, or with ſome other couſin, it is to vnderſtand by the lawe, that ſuch gift made by ſuch wordes franke maryage, is an auauncement of his doughter or of his couſin, and namelye whē the donour and his heires ſhal not haue any rēt, nor ſeruice of them, excepte tealtie, vnto the fourth degree be paſſed. &c. and for ſuche cauſe the lawe is, that he ſhall haue no thinge of the other landes and tenementes deſcended to the other parceners. &c. but if ſhe will put the tenementes giuen in franke mariage in Hochepot, as is aforſaid, but if ſhe wil not put the landes giuen in franke mariage in Hochepot then he ſhall haue nothinge in the remenant, for ỳ this it ſhal be vnderſtande by the lawe, that ſhe is ſufficientlye auaunced, to whiche auauncemente ſhe agreed and holdeth her content.

¶ And the ſame law is betwene ỳ heires of the donees in franke maryage, and the other parceners, as to put in hochpot &c. If the donees in franke mariage dye before theyr aunceſters, or before ſuche partition. &c. as to put in hochpot. &c.

¶ And note well that giftes in frank mariage was by the cōmon law before ỳ ſtatute

Cap. 2.

tute of Westminster the seconde, and
way after so hath ben vsed, & cõtinue
¶ Also suche puttinge in Yochepot. &
where landes or tenementes that
giuen in franke mariage discend fro
donours i franke mariage al only, fo
the landes discende to the doughters
the father the donour, or by the mo
the donour, or by the brother the don
or other auncestors, and not by the
nour. &c. there it is otherwise, for in
case she to whome suche gyfte in fra
mariage is made. shal haue her part,
if no such gift i franke mariage had b
made, for this that she was not anan
by them. &c. but by an other.

¶ Also if a man seyled of. xxx. acres
land, and euert acre of euen perely val
hauinge issue two doughters, as it is
foresayde, and giueth of this to the ho
band of the doughter. xb. acres in fran
mariage, and dieth seised of the other. x
acres, in this case that other syster sha
haue the. xb. acres so descended to her o
ly, and the husband and the wife shal no
put in such case the. xb. acres to them g
uen in franke mariage in Yochepot. &c.
for this ỳ the tenemẽtes giuen in franke
mariage, be of as great & as good perel
value, as the other landes descended. &c.
For if the landes giuen in franke mar
age

Lap.c.

ge were of as euē value as the remnāt
is of more value, then in dayne and to
some entent, ſuch landes giuen in frank
marriage, ſhal be put in Hochepot.ꝛc. for
this that ſhe maye haue nothinge of the
other landes diſcended.ꝛc. ¶ For if ſhe
ſhuld haue any parcel of the other lādes
diſcended, then ſhoulde ſhe haue more in
verely value then the ſiſter.ꝛc. which the
lawe wil not.ꝛc. And as it is ſayd in the
cales aforeſaid of two doughters, or two
parceners, in the ſame maner and ſtyle
cale is where there be no ſiſters, after
that as the cale and the matter is.ꝛc.

¶ And it is to witte, that landes and te
nementes giuen in franke mariage ſhal
not be put in hochpot, but with the lādes
diſcended in fes ſimple, for of landes diſ
cended in fe tayle, partition ſhalbe made
as if no ſuch gift in franke mariage had
ben made.

¶ Alſo no landes ſhalbe put in Hochepot
with other, but landes that be giuen in
franke mariage all onely. ¶ For if any wo
man haue any other landes or tenemen
tes by any other gifte in fe tayle, ſhe ſhall
neuer put ſuch lande ſo giuen in hochpot
but ſhe ſhal haue her part of the reme
naunt diſcended.ꝛc. that is to ſaye, as
much as the other parceners ſhall haue
of the ſame remenaunt.

Lyp.25.

¶ Also an other partition maye be ma
betwene parceners, that varieth from
the partitions aforesayde, as if there
iii. parceners, and the yongest wold ha
partition, and the other two would n
but wil holde in percenerye that, that
them belongeth without partition.
this case, if one parte be allotted, in se
raltie to the yongest sister after that, th
she ought to haue, then ỹ other may ho
the remenant in parcenerie, & occupie
common without partition, if they wi
and such partitiõ is good inough. And
after the elder and myddle parcener m
make partitiõ betwene thẽ of that, th
they hold, they may wel do so when the
please. ¶ An other partition shalbe ma
by force of a writ de participatione fa
enda. &c. there otherwise it is for there
behoueth ỹ euery parcener haue his pa
in seueraltie. &c. More shalbe saide of pa
reners in ỹ chapiter of iointenãtes & al
the chapiter of tenantes in common.

¶ Iointenauntes. Cap. iii.

IOintenantes be, as if a man selled o
certaine landes or tenemẽtes. &c. an
thereof hathe enfeoffed two or thre
foure or more to haue and to hold to the
and to theyr heyres in fee, or to haue
hold to them for terme of theyr liues,
for terme of an others lyfe, by force

whych

which feoffement or lease, they be seased such be iointenauntes. Cap.3.

Also if two or iii. dysseise an other of any landes or tenementes to theyr owne vse, then the disseisours be iointenantes But if they disseise an other to the vse of one of them, then be they no ioynteraun tes, but he to whom the vse of the dysseysin is made, is soletenant, and the other haue nothing in the tenancye, but be cal led Coadiutours to the disseisin. &c.

And note well, that dysseysn is proper ly where a man entreth in any landes or tenementes, where his entre is not law full and putteth him oute, that hathe the franke tenement. &c. Dysseisin.

And it is to witte, that the nature of iointenancy is, that he that survyuethe shall haue onely the hole tenauncye after suche estate as he hath, if the ioynture be continued. &c. And if thre ioyntenātes be in fee symple, and the one hath issue and dieth, yet they that survyue shal haue the tenementes hole, and the issue shall haue nothinge. And if the seconde iointenante haue issue and die, yet the thirde that sur viueth shal haue the tenementes whole, and he shall haue thē in fee symple to hi & to his heires for ever, but otherwise it is of ceners. For if thre parceners be, & be ma ant partitiō made, the one hath issue Maxime. Diuersitye.

Cap.3.

and dieth, that, that to him belongeth shal
descende to his issue. And if such a parce-
ner die without issue, then that, that
her belongeth shal discende to her heire
so that they shal haue this by discēte, and
not by the suruiuour, as ioyntenaunces
haue. &c. And as the suruiuour holdeth
place amonge ioyntenauntes. &c. in the
same maner he holdeth place among
that haue ioynt estate, or possession with
other of chatel royal, or chatel personall.
As if a lease of landes or tenementes be
made to many for terme of yeres, he that
suruiueth of the leassees shal haue the te-
nementes hole to him, during the terme
by force of the same lease.

¶ And if horse or other chatell personall
be giuen to many, he that suruiueth shal
haue the horse to him selfe.

¶ In the same maner it is of dettes and
duties. &c. For if an obligation be made
to many for one deutie, he that suruiueth
shal haue all the dette or duty, and so it is
of al other couenauntes and contractes.

¶ Also some ioyntenantes may be, that
may haue ioynt estate, and be ioyntenan-
tes for terme of their liues, and yet they
haue seuerall inheritaunces. As if lande
be giuen to two men, and to the heires
of theyr two bodies engendred. In this
case ỹ dones haue ioynte estate, for terme

of theyr two lyues, & yet they haue seuerall inheritaunces. For if the one of the donees hath issue, and dye the, the other that survyueth shall haue all by the survyuour for terme of his life, & if he that survyueth hath also issue and dye, then the issue of the one shal haue the halfe of the lande, and the issue of the other, shal haue the other halfe of the land, and they shall holde the lande betwene theym in commune, and be not ioyntenantes, but tenauntes in commune. Cap. 3.

¶ And the cause that suche donees in such case haue ioynte estate for terme of theyr lines, is, for this that at the begynning lādes were giuē to thē two, which wordes wout more saying make a ioynt estate to thē for terme of theyr liues.

¶ For if a man wil let lande to an other by dede or without dede, not makynge mencion what estate he hath, and of thē maketh liuery of seisin. In this case the lessee shal haue estate for terme of his life and so, in so muche that the landes were giuen to them, they haue a ioynte estate for terme of theyr liues: and the cause why they haue seuerall inheritaunce, is this, in so much that they can not by possibilitie haue an heyre betwene them ingendred, as a mā & a woman may haue & then the lawe will that theyr estate

Capi.3. and their inheritance shalbe such as reason will, after the fourme and effecte of the wordes of the gifte, and that is to the heires that the one engendreth of his body, by any of his wiues, and the heyres that the other engendreth of his body by any of his wiues. &c. so it behoueth by necessitie of reason, that they shall haue seueral inheritaunces. And in suche case if the issue of one of the donees, after the deathe of the donees, die, so that he hathe no issue aliue of his body engendred, the the donour or his heire may entre in the halfe, as in his reuercion, thoughe the other of the donees hath issue aliue. &c. And the cause is, for so much that the inheritances be seuered. &c. the reuercyon of them in the lawe is seuered. &c. and the suruiuour of the issue of the other, shall holde no place to haue the hole.

¶ And so as it is sayde of males, in the same maner it is, wher land is giuen to two females, and to the heyres of their two bodies begotten.

¶ Also if lades be giuen to two females and to the heyres of one of them, this is a good ioynture, and the one hath a free holde, and the other hath fee symple, and if she that hath the fee dye, she that hath the freeholde, shall haue the hole, by the suruiuour, for terme of her life.

In the same maner it is where tene- Cap. 3.
metes be giuen to two, and to the heyres
of the body of one of them engendred, the
one hath freholde, and the other fee tayle
Also if two iointenauntes be seased of
estate of fee simple, and the one grauteth
a rent charge by his dede to an other, out
of that, that to him belongeth. &c. in this
case during the life of the grauntour, the
rent charge is effectual. But after his de-
cease the rente charge is voyde, as to
charge the lande, for he that hath the lāde
by the suruiuour shal hold al the land dis-
charged. And the cause is for this, that he
that surviuethe : claymethe to haue the
lande by the suruiuour. &c. & not by dys-
cente of his felowe. &c. But otherwise it
is of parceners, for if there be two parce-
ners of tenementes in fee simple, and be
fore any particiō made, the one chargeth
that, that to him belongeth by his dede of
arēt charge. &c. and after dieth without
issue that to him belongeth, descendethe
to the other parcener. In this case the o-
ther parcener shal hold the land charged
&c. for this that he commethe vnto that
halfe by discent, as heyre. &c.

Also if there be two ioyntenauntes in Deuise.
fee simple within a borough, where the
landes and tenementes be deuisable by
testament, if one of the saide iointenātes
deuise that, that to him belongethe

Capi. 3.

by testamente. &c. and die, this deuise is voide. And the cause is for this, that no deuise may take effect, but after the death of the deuisour. And for this that by his death al the lande incontinent commeth by the lawe to his felowe, that suruiueth by the suruiuour, which ne claimeth nor hath nothinge in the lande by the deuise but in his owne right by the suruiuour after the course of the lawe. &c. for this cause such deuice is voyde.

¶ But otherwise it is of parceners seysed of tenementes deuisable in suche cas of deuise. &c. Causa qua supra.

Maxime.

¶ Also it is commonly sayde, that euery ioynt tenaunte is seased of the lande that he holdeth ioyntly. &c. throughe and by al. And this is as much to saye, that he is seased by euery parcel, & by al. &c. And this is true, for in euery parcel and parte, and by eche parcell, and by all the landes and tenementes, he is ioyntly seysed with his felowes. &c.

¶ Also if two ioyntenauntes be seised of certayn landes in fee simple, and the one letteth that, that to him belongethe to a stranger for terme of yere, & dieth before the terme begin, or within the terme in this case after the decease, the lesse maye enter and occupie the halfe to him letten, during the terme. &c. thoughe the

lesse

lessee neuer had possession of it in the life of the lessour by force of ỹ same lease. &c. Cap.3.

¶ And the diuersitye betwene the cause of the graunt of the rent charge aforsaid and this case is this. For in the graunte of a rent charge by a ioyntenaunte, the tenauntes abide alway as they were afore without that, that any hath anye ryghte to haue any parcel of the tenementes but them selfe, and the same tenementes abide in such plite as they were before the charge. &c.

But wher a lease is made by a ioyntenãt to an other for terme of yeres. &c. incontinent by force of ỹ lease ỹ lessee hath right in the same land, that is to saye, of al that that to his lessour belonged, and to haue that by force of the same lease, duringe his terme. &c. ¶ this is the diuersitie. &c.

¶ Also iointenauntes if they will, maye make partition betwene thẽ, and the partition is good inoughe, but they shal not be compelled by the lawe to do it, but if they wil make partition of theyr propre will and agremente, the partition shall stande in his strengthe. P.3.E.4. Diuersitye.

¶ Also if a ioynte estate be made of lande to the husbande and the wyfe and to the thirde personne, in this case the husbande and the wife haue not in the lawe in theyr right, but the halfe. &c. and

Cap.x. the third perſō ſhal haue as much as the
husband & the wife hath, that is to saye
other halfe. &c. And the cause is for ꝑ the
husbande & the wife be but one person in
the law, and be in like case as if estate be
made to two iointenantes, wher the one
hathe by force of iointure the one halfe, &
the other the other halfe.

¶ In the same maner is, where estate is
made to the husbande and the wyfe, and
to other two men. In suche case the hus-
band and the wife haue not but the third
part, and the other two mē the other two
partes. &c. causa qua supra. More shall be
sayde of the matter, touchinge ioynte te-
nauncy in the chappter of tenauntes in
common, tenaunt par elegit, and tenant
by estatute merchaunte.

¶ Tenauntes in common.

Capi.xiii.

TEnantes in common be they, that
haue landes or tenementes in fee
simple, fee tayle, or for terme of
lyfe. &c. and those they be, whych haue
such landes and tenementes by seuerall
tytles, and not by ioynte tytle, and no
man knoweth that, that is seuerall to hi
but they ought by the lawe to occupye
such landes or tenementes in common,
& vndeuided to take the profites in com-
mon. And bycause that they come to
such

such landes and tenementes be seuerall titles, and not by one selfe ioynte tytle, their occupation and possession shalbe by the laiwe amonge them in common, and be called tenantes in common. Cap. 4.

¶As if a man enfeoffe two ioyntenauntes in fee, and the one of them alienethe that, that to him belongeth to an other in fee, now the other ioynt tenaunt and the aliene be tenauntes in common, for this that they be seased in such tenementes be seuerall titles, for the alyene commethe in the halfe by the feoffement of the ioint tenaunt, and the other iointenant hathe the other halfe by force of the firste feoffment made to him and to his first felow and so thei be in by seueral titles, and by seueral feoffementes. &c.

¶And it is to wit, that when it is sayde in anye booke, that a man is seased in fee without more saying, it shalbe vnderstād fee simple, for it shall not be vnderstande by such word in fee, that a man is seased in fee tayle, excepte ỹ there be put thereto such addition, that is to saye fee tayle, Fee simple.

¶Also if thre ioint tenauntes be, and the one of them alieneth that, that vnto him belongeth, to an other manne in fee. In this case the alien is tenante in common with the other two ioyntenauntes. But yet the other two iointenantes be seased

of

Cap.4. of the two partes ioyntlye, and of the two partes the suruiuour betwene them holdeth place.&c.

¶ Also if there bee two ioyntenauntes in fee, and the one gyueth that, that vnto him belongeth to an other in the tail the donee and the other ioyntenaunte be tenauntes in common.&c.

¶ But if the lādes be gyuen to two men and to the heyres of theyr two bodies engendred, the donees haue ioint estate for terme of theyr liues, and if eche of them haue issue and die, their issues shal holde in common.&c.

¶ But if landes be giuen to two abbots as to the abbot of westmister, and to the abbot of saynt Albons, to haue & to holde to them and theyr successours, in this case they haue incontinente at the beginninge estate in common, and not ioynte estate. And the cause is for thys, that euery abbot or other souereigne of an house of religion, before that he bee made abbot, or souerayngne, was but a deade man in the lawe. And when he is made abbotte he is a man personable in the lawe, alōly to purchase and to haue landes and tenementes, and other thinges to the vse of his house, and not to his owne proper vse, as other seculer mē may. And for thys in the beginnig of theyr purchase, they be

tenantes

tenantes in common. And if the one of them dye, the abbot that suruiueth shall not haue al by the suruiuour, but the successour of the abbot that dieth shall holde the halfe in common with the abbot that suruiueth. Cap.

¶Also if landes be gyuen to an abbot and to a seculer man, to haue and to hold to them, that is to saye, to the abbot and his successours, and to the seculer mā, to him and to his heires they haue estate in common. Causa qua supra.

¶Also if landes be giuen to two men to haue and to holde, that is to wyt, the one halfe to the one and to his heires, and the other halfe to the other, and to his heires they be tenauntes in common. &c.

¶Also if a man sealed of certayne lādes, enfeoffeth an other in the halfe of ꝯ same lande, without any speche of assignement or limittation of the same halfe in seueraltie, at the time of the feoffement, thē the feoffee and the feoffoure shall holde theyr partes of the lande in commō. And in the same maner as is aforesaide of tenantes in cōmon of landes or tenemētes in fee simple or fee tayl, in ꝯ same maner mai it be said of tenātes for terme of life.

¶As if two iointenauntes be in fee, and the one letteth to a man that, that vnto him belongeth for terme of lyfe, and the other

Cap. 4.

the other ioyntenant letteth that, that to him belongeth, to an other for terme of life, these two lessees be tenauntes in common for terme of theyr lines. &c.

¶ Also if a man let landes to two men for terme of theyr liues, & the one graunteth al his estate of that, that vnto him belongeth to an other. &c. then the other tenant for terme of life, & he to whom the graunt is made, be tenãtes in common, during the time that both lessees be aliue. &c.

¶ And it is to be remembred, that in all other such cases, though that they be not here expressly named or specified if they be in like reason be in like lawe.

¶ Also if there be two ioyntenauntes in fee and the one letteth that, that vnto him belõgeth to an other for terme of his life the tenante for terme of life duringe his life, and the other iointenaunte that dyd not let be tenant in common.

A question

¶ And vpon this case a questiõ may rise as thus. Put the case that the lessour hath issue and dieth, leuinge that other ioyntenant his felowe, and liuing the tenant for terme of life, the questiõ may be such if the reuersion of the halfe. &c. that the lessour hath, shall descende to the issue of the lessour, or that the other ioynt tenant shal haue it by the suruiuour.

¶ And some haue saide in this case that the other

ther iointenaut shal haue the reuercion by the suruiuour, and their reasō is such when the iointenantes were iointly seased in fee simple. &c. though ỹ one of thē made estate of that, ỹ vnto him belōgeth for terme of life, & thoughe that he hathe seuered franke tenemente of that, that to him belōgeth by the lease, yet he hath not seuered the fee simple. But the fee simple abideth to him ioyntly, as it was before And so it semeth vnto thē, that the other iointenaunt that suruiueth shal haue the reuercion by the suruiuour. &c. Lay. 4.

And other haue said the contrary, and this is theyr reason, that is to saye, when one of the iointenantes letteth that, that to him belōgeth to an other for terme of his life, that by such lease the franke tenement is seuered frome the ioynture. And by the same reasō the reuercīō that is dependaunt vnto the same franktenement is seuered from the ioynture.

Also if the lessoure had reserued to him a yerely rent vpon the lease, the lessoure onely shall haue the rente. &c. The whiche is a proffe, that the reuercyon is onelye in him, and that the other hathe nothinge in the reuercion.

Also if the tenaunte for terme of life were impleded for made defaut after defaute, then the lessour shalbe onlye of this

receyued

Cap.4. receyued to defende his right, and his
lowe, in this case in no maner shal be
ceyued, whiche proueth that the re
ction of the halfe is onelye in the lessou
And so by consequens, if the lessoure
liuing the lessee for terme of life, the
uercyon shall discende to the heyre of
lessour. &c. and not come to the other
Inquere. tenant by the suruiuor. Ideo quere.
in this case if the iointenaunte that h
the franke tenemente haue issue and
liuinge the lessoure and the lessee, then
semeth that the issue shall haue the h
in his demesne, as of fee, by discente,
this that the frank tenemēt, may not
nature of the iointure be annered to
uercīō. &c. And it is certaine, that he
letted, was sealed of the halfe in his
mesne as of fee, and none shall haue
iointure in his franke tenemente. Er
Inquere. this shal discend to his issues. Sed qu
¶ But if it be thus that the lawe in
case is such, that if the lessour dye, liu
the lessee, and lyuynge the other iop
naunt that hath the franke tenement
the other halfe, that the reuercyon
discende to the issue of the lessoure,
is the iointure and the tytle that anye
them maye haue by the suruiuoure,
right of the iointure annulled and all
terly defeted for euer.

¶ In the same maner it is, if the iointe- Capi. 4.
nant that hath the franketenement dye, leuynge the lessour and the lessee, if the lawe be suche, that his franketenement and fee that he hath in the halfe, shal descende to his issue, then the iointure shall be defeted forever. &c.

¶ Also yf three coyntenauntes be, and one releaseth by his dede to one of his fellowes, all the ryght that he hathe in the lande, then hath he to whome the release is made, the thyrde part of the landes by force of the release, and he and his felow shal holde the other two partes iointly. And as to the thyrd part that he hathe by force of the release, he holdeth that thyrd part with him selfe & his felow i cõmon.

¶ And it is to wyt, that somtyme a dede of release shal take effecte, and shalbe enare to put the estate of him that made the release to hym, to whome the release is made, as in the case aforesayde. Release.

¶ And also if a iointe estate be made to the husband and his wyfe, and to a third person, and the thyrde parson releaseth his ryght that he hath. &c. to the husband, then hath the husbande the halfe that the thyrde personne hadde, and the wyfe of this hath nothynge. And if in suche case the thyrde release. &c. to the wyfe, not namynge the husbande in the release,

Capi.4. then hathe the wife the halfe that ...
chiefe perſonne hadde: and the huſb...
hathe nothinge of this, but in ryghte ...
his wife, for this that in ſuche caſe ...
releſe ſhal enure to put the eſtate to ...
to whom the releaſe is made of al ...
that belonged to him that made the ...
leaſe. &c.

¶ And in ſome caſe a releaſe ſhall enure ...
to putte all the ryghte that he hathe, ...
made the releaſe, to him to whom the ...
leaſe is made.

¶ As if a man ſeaſed of certayne lande ...
and tenementes is diſſeiſed by two diſſ...
ſours, if the diſſeiſee by his dede releaſ...
al his right. &c. to one of the diſſeiſours, ...
the he to whom the releaſe is made, ſha...
haue & hold al the tenemētes to him ...
& put out his felowe of euery occupation ...
of it. And the cauſe is for this, that the ...
diſſeiſours were ſeiſed in the tenemētes ...
by wrong by the done againſt the law. ...
And whē one of them hath the releaſe of ...
him ỹ hath right to entre. &c. thꝰ right in ...
ſuch caſe reſteth in him, to whom the re...
leaſe is made, and in ſuche plyghte, as ...
he that had the right had entred and ...
feoffed him. &c. And the cauſe is for this ...
that he that had the eſtate by wrōg; that ...
is to ſaye, by diſſeiſin. &c. he hathe not ...
by the releaſe a rightful eſtate.

All

Also in some case a releale shal enure by way of extinguishement, and in such case such releale shal helpe the intenãt to whome the releale was not made, as wel as him, to whõ the releale is made. Layl. 4. 19. f. C. 4.

¶ As if a man be disseysed, and the disseisour maketh a feoffement to two men in fee, if the disseisee releale to one of the feoffees in fee by his deede, then such releale shal enure to both the feoffees, for thys, that the feoffees haue estate by the law, that is to saye, by feoffement, and not by wrong done to any other. &c.

¶ And in the same maner it is, if the disseisour make a leale to a man for terme of life the remainder ouer to an other in fee, if the disseisie releale to the tenaunte for terme of life al his right. &c. This releale enureth as wel to him in ỹ remainder, as to the tenaunte for terme of lyfe, and shal aide and maintain the ryght of him in ỹ remainder, as wel as the right of the tenaũt for terme of life. &c.

¶ And the cause is for this, that ỹ tenaũt for terme of life cõmeth to his estate by the course of the lawe. And for this the releale shal enure and take effect by way of extinguishement of the right of him that hathe released. &c. And by this releale the tenaunte for terme of lyfe hathe no greater state, yt he had before ỹ releale

made vnto him, & the right of him that
releaſed is all vtterly extincte. And in ſo
much that ſuch a releaſe can not enlarge
the eſtate of ỹ tenaũt for terme of lyfe, it
is reſõ that the releaſe ſhal enure to him
in the remainder. &c. More ſhalbe ſayde
of releaſes in the chapiter of releaſes.

¶ Alſo if there be two parceners, and ỹ
one alyeneth that vnto him belongeth to
an other, then the other parcener and the
alyene be tenauntes in common.

¶ Alſo tenaũtes in common maye be by
tytle of preſcription, if the one & his aun-
ceſters, or they, whoſe eſtate he hath in ỹ
halfe, haue holden in common, the ſame
halfe with the other tenaũt that hath the
other halfe, & with his aũceſters or them
whoſe eſtate he hath, as vndeuyded, fro
tyme whereof no memorye runneth. &c.
And diuers other maners maye make a
cauſe men to be tenaũtes in cõmon, that
be not here expreſſed.

¶ Alſo in ſome caſe tenaũtes in common
ought to haue of theyr poſſeſſion ſeuerall
actions, & in ſome caſe they ſhall ioine in
one actiõ. For if there be two tenaũtes in
common, & they be diſſeyſed, they ought
to haue againſt the diſſeyſour two aſſiſes
and not one aſſyſe, for euerye of them
ought to haue an aſſyſe of his halfe. &c.
And the cauſe is for this, the tenaũtes in

common

mon were seased by seueral tytles, but otherwyse it is of ioyntenauntes. For yf there be .xx. ioyntenauntes, and they be dysseased, they shall haue in all theyr names but one assyse, bycause that they had but one ioynte tytle. Capl. 4.

Also if there be .iii. ioyntenauntes, and one releaseth to one of his felowes all the ryght that he hath, and after ỳ other two be dysseased of the hole. &c. In this case ỳ other .ii. shal haue seueral assises in this forme, ỳ is to say, they shall haue in both their names one assise of the two partes, &c. for this that they helde the two partes iointly at ỳ tyme of ỳ disseisin. And as to the third part, he to whom the release was made ought to haue therof an assise in his owne name, for this that as to the thyrd parte he is tenaūt in commō. &c. for this that he came to that thyrde part by force of the release, and not only by force of the ioynture. Also as to sewe actions ỳ toucheth the royaltie, there is dyuersytie betwene parceners that be in by dyuers dis centes, and tenauntes in common.

For if a mā seased of certain landes in fee haue issue two doughters and die, & they entre. &c. and eche of them hath issue a sonne, and dye without partycyō made betwene theym, by whiche the one halfe descendeth to the son of ỳ one parceuer & Parceners by dyuers discentes dysseised shal haue in theyr .ii. names one.

the other halfe descendeth to the sonne of the other parcener, and they entre and occupye in common, and be disseased, in this case they shall haue in theyr two names one allyse, and not two allyses. And the cause is, that thoughe they come in by diuers discentes, &c. yet they be parceners and a wrytte de participatione faciendo lyeth betwene them, and they be not parceners hauing regarde or respect only to the seisin & possession frō theyr mothers, but they be parceners hauynge more respect to the estate that descended frō theyr graūdfather to theyr mothers, for they maye not be parceners where their mothers were not parceners before. &c.

¶ And so to such respects and consyderacion, that is to wyt, as to the fyrst discent it was to theyr mothers, they haue a title in parcener, the whiche maketh them parceners. And also they be put as one heyre to theyr common ancestors, that is to sai, to theyr graūdfather, from whome the land descended to their mothers. And for these cases before partycyon betwene thē, &c. they shuld haue one allise, thoughe they come in by seuerall discentes.

¶ Also yf there be two tenauntes in common of certayne landes in fee, and they gene the same land to an other man in the tayle, or let it to an other man for

by terme of lyfe, yeldynge an annuytye Capi. 4.
or certayne rent, and a pound of pepper,
or an haulke, or an horſe, and they be lea-
ſed of the ſeruices, and after all the rente
is behynde, and they dyſtreyne for it, and
the tenaunt maketh the reſcous. In that
caſe as to the rent & the pound of pepper,
they ſhall haue two allies, and as to the
haulke, and the horſe, but one allyſſe, and
the cauſe why thei haue two allies, as to
the rent and pounde of pepper is this, in
ſo muche that they were tenaūtes in com-
mon by ſeueral tytles, and when they
made a gift in the taile, or leaſe for terme
of lyfe, &c. ſa uynge to them the reuercion
and yeldynge to them certayne rente, &c.
ſuche reuertion is incydents to theyr re
uercyon.

And for thys that theyr reuercyon is
in common, and by ſeuerall tytles, as
theyr poſſeſſyō was before theyr rēt and
other thynges, that maye be ſeuered and
were to thē reſerued vpon the gift, or vp-
on the leaſe, whiche be incydent by the
lawe to the reuercion, ſuch thinges ſo re-
ſerued was of ỹ nature of the reuercyō,
whiche reuercion is to them in cōmō by
ſeuerall tytles. And it behoueth, that the
rent of the pounde of pepper, which may
be ſeuered, be to thē in cōmon by ſeuerall

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titles. And of this they shal haue two ſ
ſitles, and euery of them in his aſſise, ſh
make his playnte of the halfe of the t
and of the halfe of the pounde of pep
&c. But of the hauke and the hoꝛſe, w
che cā not be ſeuered, they ſhall haue
one aſſise, foꝛ a man maye not mak
playnte in aſſise of the halfe of an hauk
oꝛ of the halfe of an hoꝛſe. &c. In the ſa
maner it is of other rentes and ſeruyc
that tenaũtes in common haue in gro
by dyuers titles.

¶ Also as to actions perſonals, tenaũte
in common ought to haue ſuche actyo
perſonals ioyntly in al theyꝛ names, th
is to ſay, of treſpaſſe, oꝛ of offences th
touche theyꝛ tenementes in commō. &
of bꝛeakyng of theyꝛ houſes, bꝛeaking
theyꝛ cloſures, and paſtures, waſtyng
and defoulyng of theyꝛ graſſe, cutyng
of theyꝛ wodde, and to fyſſhe in the
ponꝺes, and ſuche other. In this ca
tenauntes in common ſhall haue one ac
tion ioyntly, and recouer ioyntlye dam
ges, bycauſe that the action is in the pe
ſonaltie, and not in the realtie.

Tenaũtes in common ſhall haue an actiõ of dette.

¶ Also yf two tenauntes in common
make a leaſe of theyꝛ tenementes to an
ther foꝛ terme of yeares, yeldynge by
to them yerely a certayne rente durynge
the terme, yf the rente be behynde. &c. the
tenaũtes

tenantes in common shal haue one actiõ Layt. 4.
al vere agaynst the lessee, and not diuers
actyõs. for that the actyon is in the per- Anourie.
sonalte. But in anoury for the sayd ret,
they ought to seuer, for that is in the re-
alte, as the assise is aboue.

¶ Also tenauntes in commõ maye make Particio ex
particiõ betwene thẽ if they wyl, though consensu
they shall not be compelled by the laiwe.
But if they make particion betwene thẽ
by theyr agremente and assent, such par-
ticion is good ynough, as it is adiudged,
in the boke of assise. 29. E. 4.

¶ Also as there be tenaũtes in common Tenauntes in
of landes or tenementes. &c. as is afore common of
sayd. In the same maner there be possessi- cattel.
ons and properties of chatell reall, and
chapell personall. As if a trase be made of
certayne landes to two men for terme of
yeres, and when they be therof posses-
sed, the one of the lessees graunteth that
that vnto him belongeth, durynge the
terme to an other, then he to whome the
graunt is made, and the other shal holde
and occupie in common.

¶ Also yf two toyntenauntes haue the
warde of the bodye, and of the landes of
the chylde, within age, and that one of
them graunteth to an other that, that vn-
to him belõgeth of the same warde, then
the graũtee, and the other that graũteth

not, shal haue and holde it in cõmon.
¶ In the same maner it is of chatels personals, as yf two haue a toynt estate by gyfte, or by byeng of an hoyse, or an ox &c. and the one grauteth that, that to hym belongeth to an other &c. The y grauntee and he that graunted not, shall haue and possesse suche chatels personalles in common &c. And in such cases where diuers parsons haue chatels reals or personals in cõmon, & by diuers tytles, if the one of them dye, the other that suruyueth, shall not haue that by the suruyuour. But the executours of hym that dyeth, shall holde and occupy that with him that suruiueth as they? testatoure dyd or ought in his lyfe &c. for this that they? tytles & rygh in this case were seuerall.
¶ Also in this case aforesaid, if two haue estate in commõ for terme of yeares, and the one occupie all, and put the other out of his possession and occupatyon, then he that is put out of occupation, shall haue agaynste that other a writte de ejectione firme, of the halfe agaynst the other.
¶ In the same maner it is, where two holde the warde of landes or tenementes durynge the nonage of a chylde, yf one put oute the other of his possessyon, he that is out shal haue a writ de ejectment de garde, of the halfe for this that thofe

thynges

ynges be chatels reals, and may be ap- Lay. 4.
pcioned and seuered. &c. But no such ac
on of trespas, that is to say. Quare clau-
sum suum fregit, et herbam suam cōcul-
cauit et consumpsit. &c. And suche lyke ac
tions the one may not haue agaynst the
other, for this that eth of thē maye entre
and occuppye in common. &c. through and
by all the landes and tenementes, which
they holde in common. But if two be pos
sessed of chatelles personelles in cōmon
by diuers titles, as of an horse, or an ore,
or a rowe, if the one take it al to him selfe
out of the possession of the other, the other
hath none other remedy, but to take this
of him, that hath done to him the wrong
ful to occuppye in common, when he may
se his tyme.

¶ In the same maner it is of chatel reall
that may not be seuered, as in case afore
sayd, that two be possessyoners of a ward
or the bodye of a chylde within age, yf
one take the chylde oute of the possessyon
of the other, the other hathe no remedye
by any action by the law, but to take the
chylde out of the others possessyon when
he seeth his tyme. &c.

¶ Also when a man in pleadynge, wyll The fourme
shew a dede of feoffemēt made vnto him, of pleadynge.
or a gyfte in the taile, or a leake for terme
of lyfe, of anye landes or tenementes,

there

Capi. f.

Diuersitie.

there he shal say, by force of which feoffment, gyft or lease, he was seased. &c. Where a mā wyl pleade a lease or a gyft made vnto him of chatel real or personal there he shal say, pforce of which he was possessed. More shalbe said of tenaūtes in cōmon in the chapiter of releases, cōfyrmacions, and tenaūtes per elegit.

Estates vpon condicion. Capi. b.

Estates that mē haue in landes or tenementes be in two maners. That is to say, they haue estate vpon condicion in dede, or vpō condicyon in law. Vpon condycion in dede, is where a man by dede indēted enfeoffeth an other in fee reseruyng to him and to his heyres perpetuall a certayne rent, payable at one feaste or at dyuers feastes by yere vpō cāditiō, that if the rent be behynde. &c. ỳ it shalbe lefull to the feoffour and to his heyres to entre into the landes or tenementes. &c. Or yf the lande be alyened to an other in fee, to yelde vnto him certain rēt. &c. And if it happe that the rent be behynde by a weke after any day of payemente of it, or by a moneth, or by ỳ halfe yere, after any day of payment, that then it shalbe lefull to the feoffoure, and to his heyres to entre. &c. In this case yf the rente be not payde at suche a tyme, or before suche a tyme

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ryme lymitted and specifyed within the condicion cõprysed in the endenture, thẽ may the feoffour or his heyres entre into such landes or tenementes, & them in his first estate to haue and to hold, & of this to put the feoffe cleane out, and it is called estate vpon condycyon, for this that the estate of the feoffe, is defesible, yf the condicion be not performed.

¶ In the same maner it is, if lãdes be gyuen to a man in the tayle, or let for terme of lyfe, or for terme of yeares, vpon such condicion. &c. But where a feoffement is made of certaine lãdes, reseruig certain rent vpon such condicion that yf the rent be behynde, that it shalbe leful to ỳ feoffour and his heyres to entre in the lande tyll he be satysfyed or payde of the rente behynd. &c. In this case yf the rent be behynde, and the feoffoure and his heyres entre, ỳ feoffee is not excluded cleane out But the feoffoure shal haue and hold the lande and take the profytes tyll that he be satysfyed of the rent behynd. And whẽ he is satisfied, then the feoffee may reenter in the same lande and holde it as he dyd before, for in such case ỳ feoffour shal haue it but in maner as for a dystresse in the meane tyme tyl he be satisfyed of the rent. &c. though he take the profytes in the meane tyme to his owne vse.

Also

Capi.j.

Also diuers wordes amonge other be, that by vertue of the selfe make vpon condicion. One is this worde condicion, as if A. enfeoffeth B. of taine lande to haue and to holde to same B. and his heires vppon condi that the same B. and his heires shal or do to be payed to the forsayde A. to his heires yerely suche a rente. &c. this case without any more saying feoffee hath estate vppon condicion. &c.

Vppon a con vpon.

¶ Also if the condicion were suche. Pro uided alway that the forsaide B. pay do to be payed to the forsaide A. suc rent. Or if they were thus, so that the sayd B. paye or do to be payed to the saide A. suche rent. In these cases, wo out any more saying the feoffe hath estate but vppon condicion, so that if perfourme not the condicion, the fello and his heires may enter. &c.

Proniso.

¶ Also other wordes there bee in a dede that causeth the tenauntes to be condi nels, as vppon such a feoffement a ren reserued to the feoffoure. &c. and after is put in the dede, that if it chaunce the forsaide rent to be behinde in part or al &c. that then it shall be lawfull to the feoffour and to his heires to enter. And this is a dede vppon condicion.

¶ But there is diuersitie betwene thes

wordes

wordes if it chaunce. &c. and the wordes Lapi. f.
next aforesaide. For this worde. If it
chaūce. &c. is nought worthe to such con
dicion, but if it haue these wordes folo
winge, that is to saye ỳ it shal be leful to
the feoffoure & to his heires to entre. &c.
But in these cases aforesaid, it nedeth
not by the lawe, to put suche clause, that
is to saie, that the feoffour and his heires
maye enter. &c. for this, that they maye so
do by force of the wordes aforesayde, by-
cause they conceyue in them selfe in the
lawe a condition, that is to saye, that the Condicio
feoffour and his heires maye enter, yet it implicita.
is commonly in al such cases aforesayde
to put suche clauses in the dedes, that is
to saye, if the rente be behinde. &c. that it
shalbe leful to the same feoffour and his
heires to enter. &c. And this is well done
in the entēt for to declare and expresse to
the laye men, that be not learned in the
lawe the maner and the condicion of the
feoffement. &c.

As if a man seised of lande, as of frāke
tenement, let the same lande to an other
by dede indented for terme of. xx. yeares
yelding vnto him certain rent, it is vsed
to put in the dede, that if the rente be be
hinde at the daye of payment by a weke
or a moneth. &c. that then it shalbe lawfull
to the lessours, to distrayne. &c. and yet

the

Capl.f.

the lessour may distraie of comm̃ right for the rent behind.&c.though suche bestes neuer were put in the dede.&c.

¶Also yf anye feoffemente be made to a man vpō such condicion, that if the feoffour pay to the feoffee at a certayne day, &c.xx.li.of money,that then the feoffour may reenter.&c.In this case the feoffee is called tenaunte in morgage,that is as much to say in frenche as morteg age and in latin mortuum vadium,and in Englyshe a dede pledge.

Pignus mortuum

¶And it semeth that the cause why it is called morgage is,for that,that it standeth in doubte,if the feoffour kepl pay at the daye lymitted suche a summe or not, and if he paye not,then the lande that is put in pledge vpon condicion for the payment of the money,is gone from him forever.And so dede to him vpon a condicion and yf he paye the money, then is the pledge deade as to the tenaunt.&c.

¶Also as a man may make a feoffement in fee in morgage,so may a man make a gyft of the tayle in morgage,and a lease for terme of lyfe,or for terme of yeres in morgage.And all such tenauntes be called tenauntes in morgage,after the state that they haue in the landes.&c.

¶Also if a feoffemente be made in morgage,vpon condicion,that the feoffour

shal paye such a summe at such a day. &c. Cap.5.
as it is betwene them by their dede inden
ted, accorded, and limitted, though the fe
offour dye before the day of payment. &c.
yet if the heire of ỳ feoffour pay the same
summe of money at the day to the feoffee
or proffer him the money, and the feoffee
refuseth to receyue it, then may the heyr
entre into the landes. And yet the condy-
cion is, if the lessour paye such a summe
at such a daye. &c. and not making mēcō
in the cōdicō of any paymēt to be made
by his heire. But for this, that the heyre
hath interest of right in the cōdicion. &c.
and ỳ entent was but ỳ the money shuld
be payed at the day set. &c. and the feoffee
hath no more damage, if he be paide by ỳ
heyre, then though he were payed by the
father. &c. And for this cause if the heyre
pay the money, or tendereth the money at
the day set. &c. and the other refusethe it,
he may wel entre. But if a straunger of
his owne head, that hath no interest. &c.
wold tende and paye the money to the fe-
offee, at the dayeset, then the feoffee is
not bounde to receyue it. &c.

And it is to be had in mynde, that in
the case where such lawfull tender of
the money is made, and the feoffee refu-
seth to receyue it, wherfore the feoffoure
or his heires do ster. &c. thē ỳ feoffe hathe

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no remedy to haue the money by the co
mon lawe, for this that it shalbe areck
his owne folye, that he refused the mone
when lawful proffer was made of it vn
to him. &c.

¶ Also if a feoffemente be made in such
condicio, that if the feoffee paye to the fe
offour at such a day betwene them limi
ted. xx. li. that then the feoffee shall haue
the lande to him and to his heyres, and if
he fayle to pay the money at the day assi
ged. &c. that then it shal be lefful to the fe
offoure or to his heires to enter. &c. and
after before the day set, the feoffee selleth
the lande to an other, and therof maketh
a feoffement to him, in this case if the se
conde feoffee will tende the summe of mo
ney at the day set to the feoffour, and the
offour refuseth it. &c. the hath the seconde
feoffee estate in the land clerely without
condicion. And the cause is for that the se
cond feoffee had interest in the condicion
for saluacion of his tenancie. And in this
case it semeth, that the first feoffee after
such sale of the land will tend the money
at the daye set for the seconde feoffee to
feoffour, that shal be good inough for the
saluacion of the estate of the secod feoffee
for this that the firste feoffee was pryue
to the condicion, and so the tender of
any of them both is good inough. &c.

In what
time tender
shalbe.

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Also if the feoffement be made vppon condicion, that if the feoffour paye a certayne some of money to the feoffee, that then it shall be lawfull to the feffour & to his heires to entre. &c. In this case if the feoffour die before the day of paymente, and the heyre will tender to the feoffee the money, such tender is voyde, for this that the time within whiche the tender ought to be made, is past. For when the condicion is, that if the feoffour paye the money to the feoffee, this is as muche to saye, that if the feoffour duringe his lyfe paye the money to the feoffee. &c. And whē the feoffour dieth, thē the time of the tender is past. But otherwise it is, where a day of paiment is limitted to the feoffour and he dieth before the day then may the heire tender the money, as it is aforesaid for this that the time of the tender was not past by the death of the feoffour.

Also it semeth in such case, where the feoffour dieth before the day of payment the executours of the feoffour tender the money to the feoffee at the daye of payement the tender is good inough. And yf the feoffee refuse this, the heyre of the feoffour may enter. &c. And the cause is for this that the executours representē the person of theyr testatour. &c.

Also note wel, that in all suche cases of

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condicion of payment of certayne stuf in grosse, touchinglādes or tenementes, lawfull tēder be ones refused, he ꝑ ought to paye the money is therof assoyled and clerely discharged for euer after.

¶ Also if the feoffee in mortgage before the day of paiment that shalbe made vnto him, make his executours and dye, and his heyre entreth into the land as he ought: It semeth in this case, that the feoffour ought to pay the money at the day set to the executours, & not to ꝑ heyre of the feoffee, for this that the money at the beginning belonged to the feoffee in maner as a duetie. And shall be vnderstand that the estate was made, bicause of bodily winge of the money of the feoffee, or bycause of an other duetie. And for this the payment shall not be made vnto the heyre of the feoffee as it semeth. But ꝑ wordes of the condicion may be such that the paiment shalbe made vnto the heyre, as if the condicion were that the feoffour paye to the feoffee or to his heyres such a summe of money at suche a daye. &c. There after the deathe of the feoffee ꝑ he dye before the daye lympted payment ought to be made to the heyre at the day set.

Where tender shalbe made.

¶ Also in suche case of a feoffement in mortgage a question hath bene demaunded, in what place the feoffour is bound to tende ꝑ

tender the money to the feoffee at the day Cap.5.
set,&c. And some haue sayde that vppon the lande so holden in mo3gage, fo3 this that the condicion is dependant vpō the lande, and they haue said, that if the feoffoure be redye vpon the land to pay the money to the feoffee at the daye set, and the feoffee be not at that time there, that thē the feoffour is excluded & discharged of payment of the said money, fo3 this, ỳ no defaute was in him. But it semeth to some men, that the lawe is contrary and that defaut is in him. Fo3 he is bounde to seke the feoffee, if he be then at any time in any maner of place within the realme of England. As if a man be bound in an obligacion of .xx. pounde vpon condicio indoted vpon the obligacion, that if hee paye to him to whom the obligacion is made at such a daye .x.li. that then the obligacyon of .xx.li. shall lose his fo3ce, & shalbe holden fo3 nought, in this case it behoueth him that made the obligacion to seke him to whome the obligacion is made if he be within englande, and at the daye sette, to tender to him the sayde x.li.&c. And otherwise he fo3fayteth the same of .xx.li. compziled within the obligacion & so it semeth in the other case &c. And though that some haue sayd, that the condicion is depēdant vpon the land

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yet this is not praued, that the seisin of the condition to be performed, ought to be made vpō the land. &c. no more if the condicion were, that the feoffour shuld do at such a daye, &c. an especiall corporall seruice to the feoffee, not namyng the place where the corporall seruice shuld be done. In this case the feoffour ought to do such corporall seruice at the day limit to the feoffee, in what so euer place of Englande that the feoffee wil haue aduauntage of the condicion &c. And so it seemeth in that other case. And it seemeth to thē that it shall be more properly sayde, that the estate of the land is dependaunt vppon the condicion. which is as much to saye, that the condicion is dependaunt vpon the lande, &c. but enquire, &c.

But if a feoffement in fee be made reseruing to the feoffour an annuel rent, and for defaut of paiment a reentre, &c. this case it nedeth not to the tenāt to tender the rent when it is behind, but only vpon ỹ lande, for this, that this is a rent going out of the land, which is rēt secke. For if the feoffour be ones seased of this rent, and after he commeth vpon ỹ land, &c. & the rēt is denied hī, &c. he may haue assise of nouel disseisin, for thoughe he may enter bycause of the cōdicio broken

yet

yet he may chose, that is to saye, to enter Cap.x.
or to haue an assise. And so is there diuer
sitie, as to the tender of ỳ rent, that is go
ing out of the lande, and of ỳ tender of an
other summe in grosse, which is not go-
ing out of any land. And therfore it shall
be sure & a good thing for thẽ ỳ wil make
such feoffement in mortgage, to put & set
a special place, wher the money shall bee
payed. And the more speciall that it is
put, the better it is for the feoffour. &c.

¶ As if A. enfeoffe B, to haue to hym
and to his heires vppon suche condicion
that if A. pay to B, in the feaste of saincte
Michel tharchangel nexte commynge in
the cathedrall church of saynct Paule of
London, within foure houres next before
the houre of noone, of the same feaste, at ỳ
Rode lofte of the northe dore within the
same church, or at the tombe of saint Er
kenwalde, or at such a chapel dore, or at
such a pilloure within the same churche,
that then it shal be leful to the forsayd A.
and to his heires to entre. &c. In suche
case it nedeth not to seke the feoffee in a-
ny other place cõprised in the endenture
nor to be there more lenger time thẽ the
time specified in the same indentare, for
to tẽder, or pay the money to ỳ feoffee. &c.
¶ Also in such case where the place of

Layl.5.

payment is limit, the feoffee is not bou
to receyue the paymēt i none other pla
but in the place so limitted. But yet if
receyue the payment in any other pla
this is good inoughe, and as stronge
the feoffoure, as yf the receyte had be
the same place so lymytted. &c.

Ratifica-
tion.

¶ Also in this case of feoffement in mo
gage yf the feoffoure paye to the feoffe
an hoyse or a cuppe of syluer or a ringe
golde or anye other suche thinge in ful
satysfaction of the money, and the oth
this receyueth, this is good ynough, an
as stronge as if he had receyued y sum
of money, thoughe the hoyse, or any of th
other thynges be not the twentye part
worthe in value of the summe of mone
for this that the other hath accepted it in
playne and ful satisfaction.

☞ Also yf a man enfeoffe an other in
fee vpon condicion, that he & his heire
shal yelde to a stranger and to his heire
a yerely rent of twenty shyllynges, an
yf he and his heyres fayle of payment o
this, that then it shalbe lawful to the fe
offour and to his heyres to enter, this is
a good condycyon. And yet in this cas
though such a yerely rēt be called an an
nuel rēt, this is not properly a rēt, for it
it shalbe rent, it ought to be rent seruy
rent charge, or rēt secke, & yet it is no

for if the straunger were sealed of
and after it were to him denied, he
shal neuer haue assise of this, for this y
it issueth not out of any lādes. And so the
straunger hath no remedie, if any suche
yearelye rent be behind in this case, but
that the feoffour and his heires may en-
ter. &c. & yet if the feoffoure or his heyres
entre for defaute of payment, then suche
rente is gone for euer. And so such rente
is but a payemente sette to the tenaunte
and to his heires, that if he will not paye
this after the fourme of the indenture,
that they shal lese theyr lande by the en-
tre of the feoffoure, or his heyres for de-
faute of payment. And in this case it se-
meth, that the feoffee & his heyres ought
to seke the straunger and his heires, if
they be i England, bicause that no place
is limitted where the paymente shall be
made and bicause that such rente is not
going out of any lande. &c.

And here note wel two thinges: One
is that no rente that is properlye sayde
rente maye be reserued vpon anye feoffe
ment, gyfte or lease, but onlye to the feof
foure donour lessour, or to their heires,
and in no maner it may be reserued to a
ny straunge person.

But if two iointenauntes make a lese
by dede indented, reseruinge to the one

Cap. .

of thē a certayn yerely rent that is gode ynough to him, to whom the rente is reserued, for this that he is priuie to the lease and not a straunger therto. &c.

Marius.

¶ The second thinge is, that no entre or reentre which is al one, may be reserued nor giuen to any person, but onely to the feoffour, or to the donour, or to ỹ lessour or to their heires, & such entre maye not be alienes nor graunted to any person.

¶ For if a man let landes to an other for terme of life by endenture, yeldinge to the lessoure and to his heyres a certayne rent, and for defaut of paymēt a reentre &c. if after the lessour by a dede graūt the reuercion of the lande to an other in fee and the tenaunte for terme of life attourneth. &c. if the rent after be behinde, the grauntee of the reuercion may distraine for the rent, for this that the rent is incident to the reuercio, but he may not entre into the land, and put out the tenant for the condicion broke, as the lessour might or his heires, if the reuercion had ben continued in them. &c. and in this case the entre is take away at al times, for ỹ graūt of the reuercio may not entre, causa qua supra. And ỹ lessour nor his heires maye not entre, for if the lessoure maye entre then he ought to be in his first estate. &c. and that maye not be for this that he

hath ỹ

hath aliened from him the reuercion. &c. Lord.

¶ Also if there be lorde and tenaunt and the tenaunt make a lease for termis of life, yeldinge to the lessoure and to his heyres such a yerely rent, and for defaut of payment a reentre, &c. if after ỳ lessor die without heyre duringe the state of the tenaunt for terme of lyfe, by whiche the reuercion cõmeth to the lord by way of eschete, and after the rẽt of the tenant for terme of life is behinde, the lord may distraine the tenant for the rent behinde, but he may not entre into ỳ land by force of the condicion. &c. for thỳ that he is not heyre to the lessour. &c.

¶ Also if lande be graunted to a man for terme of two yeres vpon a condicio that if he paye to the grauntoure within the sayde two yeres forty markes, that then he shal haue the lande to him and to his heyres. &c. In this case if the graunte entre by force of the graunt without any liuerye of seisine, made to him by the grantour, & after he payeth to ỳ grantor the .xl. markes within ỳ .ii. yeres, yet hee hath nothing in the land but for term of ii. yeres, for this that no liuery of seisin was to him made at the beginig: for if he had frãktenemẽt & fee, i this cale bicause he hath parfourmed the condicion, then shuld he haue franktenement by force of

the

Cap. 5. the firſt graūt, where no liuerie of ſeiſin was made therof which ſhuld be agaīſt reaſon, &c. But if the grauntoure hath made liuerye of ſeiſin to the grauntee by force of the graunt, then hath the grauntee the franke tenement and the fee by the ſame condicion. &c,

¶ Alſo if land be graunted to a man for terme of .b. yeares, vpon condicion, that if he pay to the graūtour within the firſt two yeres fourty markes, that thē he ſhall haue fee or els but for terme of the ſame yeres, and liuery of ſeiſin is made to him by force of the graunt. Nowe he hath fee ſimple condicionall. &c. And if in this caſe the graūtee pay not to the grauntour the .xl. markes within the ſame two firſt yeres, then immediatly after the ſame .ii. yeres the fee and the franke tenement is and ſhalbe adiudged in the graūtour, for this that the grauntour may not after the ſayde two yeres incontinent enter vpon the grauntee, for this that the grauntee hath yet title by thre yeares, to haue and to occupie the lande by force of the ſame graunte. And ſo for this that the condicion of parte of the graunt is broken, and the grauntour maye not enter, the lawe ſhall putte the fee and the franke tenement in the grauntour. For if the graūtes in this caſe make waſte, then after

the

the breakinge of the condicion .&c. and Cap. 5.
after the two peres, the grauntour shall
haue his writte of waste, and this is a
good proofe, that the reuertion is in hym
&c. But in suche case of feoffemente vp-
pon condicion where the feoffoure maye
enter lawfully for the condicion broken
&c. there the feoffour hathe the franke te-
nemente before the entre. &c.

¶ Also if a feoffement be made vpon such
condicion, that the feoffee shall gyue the
lande to the feoffour, and to the wife of ȳ
feoffour, to haue and to hold to them and
to the heyres of theyr bodies engendred,
and for defaut of such issue to remayn to
the right heires of the feoffour. In this
case if the husbande die, the wife liuinge
before estate in the tayle made to them,
then ought ȳ feoffee by the lawe to make
estate to the wife as like to the condicio,
and as like to the entent of the condicion
as he may make it, that is to saye, to lette
the lande to the wife for terme of lyfe,
without empechemēt of waste, ȳ remain-
der after her decease to the heires engen-
dred of the body of her husband and hers
and for defaute of such issue the remayn-
der to the right heyres of the husbande.
And the cause why the lease shalbe made
in thys case to the woman sole withoute
empechement of waste, is for this, that
the

Cap. f. the condicion is, that the eſtate ſhall be made to the huſbande, and to his wife in the tayle. And if ſuch eſtate hadde be made in the life of the huſbande then after the deathe of her huſbande, ſhe hadde hadde eſtate in the tayle, whiche eſtate is without impechemēt of waſte, and it is reaſon, that if after a mā may make eſtate to the entente of the condicion. &c. that he ſhal make. &c. though ſhe can not haue eſtate in the tayle; as ſhe myght haue hadde if the gifte in the tayle hadde be made to the huſbād, and to her, in the life of her huſbande. &c.

¶ Alſo in this caſe if the huſbande and the wife haue iſſue and die before the gift in the tayle made vnto them. &c. then ought the feoffee to make eſtate to the iſſue and to the heyres of the bodye of the father and the mother engedred, and for defaut of ſuch iſſue. &c. the remainder to the right heyres of the huſbande. &c.

And the ſame lawe is in other caſes ſemblable. And if ſuch a feffee wil not make ſuch eſtate when he is reaſonably required by them, that ought to haue eſtate by force of the condicion. &c. then maye the feoffoure or his heires entre. &c.

¶ Alſo if a feoffement be made vpon condicion that the feoffee ſhall enfeoffe many men to haue and to holde to them

and

and to theyr heyres for euer, and all they that ought to haue estate, dye before any estate made vnto thē, thē ought the feoffee to make the estate to the heyre of him that surmeth of them, to haue and to holde to him, and the heyres of him that surmeth. &c. Cap. 5.

Also if a feoffemente be made vppon condicion to enfeoffe an other or to giue in the tayle to an other, if the feoffee before the parfourminge of the condycion, enfeoffe a straunge person, or make a lease for terme of life, then may the feoffour or his heyres entre. &c. for thys that he hath disabled him selfe to perfourme the condicion, in so muche that he made estate to an other. &c.

In the same maner it is, if the feoffee before the condicion perfourmed, lette the same lande to a straunger for terme of yeres. In this case the feoffour or his heire may entre. &c. for this that the feoffee hath disabled him selfe to make estate of the tenemētes according to that that was in the tenementes, when estate therof was made vnto him, for if he will make estate according to the condycion. &c. then maye the lessee for terme of yeres entre, and put out him to whō the estate is made. &c. to occupy this during

his

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his terme. And many haue ſaide, ſ
ſuch a feoffement be made to a man
vpon the ſame condicion and before
he hath perfourmed the condicion,
keth a wife, then the feoffour or his
may incontinēt enter, for this that
hath made eſtate, according to the
cion, and after dieth, his wife ſhal
dowed, and may recouer her dower
writ of dower. &c. And ſo by taking
a wife the tenementes be put in an
plite, then they were at the time of
feoffement vpon condicion, for this
then no ſuch woman was dowable,
ſhulde be endowed by the lawe. &c.

¶ In the ſame maner it is, if the
charge the land by his dede of rēt ch
before the parfourming of condicion
be bounde in a ſtatute Staple, or ſ
marchant, in ſuch caſes the feoffour
his heyres may enter. Cauſa qua ſup
For who ſo euer commeth to the ten
tes by the feoffement of the feoffee,
the tenementes muſt be liable, & be
in execution by force of the ſtatute
chant, or of the ſtatute ſtaple, quere
when the feoffoure or his heyres,
caſes afore ſayde haue entred, ſo as
ought as it ſemeth. &c. Thē al ſuch
ges that before ſuch ētre might
or encombre the tenementes ſo

con condicō. &c. as touching the same te- Cap. 8.
nentes be vtterly deketed by their entre
Also if a mā make a dede of feoffemēt
to an other, and in the dede is no condici-
on, &c. And when the feoffour will make
to him liuerie of seysyn by force of the
same dede, he maketh to hym suertye of
seisin vpon certayn condicions. In this
case nothing of the tenementes passethe
by the dede, for this that the condycion
is not compzised in the dede, and the feof
ement is of such force, as if no such dede
had bene made therof &c.

Also if a feoffemente be made vppon
such condicion, that the feoffee shall not
alene the lande to no man, this condicio
is voyde, for this that when a man is en
feoffed in landes or tenementes, he hath
power to alene them to some person by
the lawe, for if such condicion should be
good, then the condicion putteth the feof
ee out of al the power, that the lawe gy-
eth which shuld be against reason, and
by this such condicion is voyde. But if
the condicō be such, that the feoffee shall
not alyen to one such, naming his name
or to any of his heyres, or the issues of
such one, &c. or suche other like condicyo
nis taketh not alway al the power of alie-
nacion of the feoffee, &c. then suche con-
dicion is good,

Cap. 56 ¶ Also if tenntes be giuen in the tayle vpō
such cōdicion, that the tenaūt in the tayle
nor his heires. &c. shal not alien i fee
in tayle, nor for terme of others lyfe,
for their owne liues. &c. suche condicion
is good. And the cause is for this, that
whē he maketh such alienacion & dyscon-
tinuaunce of the tayle, he doth cōtrary to
the entente of the donoure, for which the
statute of westminster the second. cap.
was made, by which estatute the estates
in the tayle be ordeyned, for it is proued
by the wordes compryised in the same es-
tatute, that the entente of the making of
the same estatute was, that ỹ will of the
donour in such cases shulde be obserued.
And whē tenant in the tayl maketh such
discontinuaunce, he doth the contrary to
that. &c. And also in estates in the tayle
of any tenēmentes, when the reuercyon
of the fee simple is in the donoure if that
he giue not the remaynder ouer, or after
the gift graunteth the reuercion to an o-
ther person when such dyscontynuaunce
is made, then the fee simple of the do-
nour is i the reuercīō, or of him in the re-
maynder is discontinued. and for thys
that the tenāt in the tayle shal do no such
thinge agaynste the profyte of his issues
and good ryghte, suche condicion is good
as it is aforesaide. &c.

Also

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Also a man maye gyue landes in fee tayle vpon suche condicion, that if the tenant in the tayle, or his heyres, alyene in fee or in tayle, or for terme of an others life &c. And also that if all the issues comyng of the tenant in the tayle be deade without issue, that then it shalbe lefull to the donour, and to his heires to enter. And by such way the right of the tayle maye be saued after such discontinuaunce of the issue in the tayle, yf there be anye, that by way of entre of the donour, or of his heires, the tayle shall not be defeted by such condicion. Mueere dubor.

And yet if the tenaunte in the tayle in this case, or his heires make anye dyscontinuaunce, &c. Ye in the reuercion or his heires, after that the tayle is determined for defaute of issue, &c. maye enter into the lande by force of the same condicion, and shall not be driuen to sue a writte of Formedone in the reuercion, &c.

Also a man maye not pleade in anye action, that estate was made in fee or in the taile, or for terme of lyfe vppon condicion, but if he vouche a recorde thereof or shewe a writynge vnder seale, proouinge the same condicion, for it is a common erudicion, and learning, that a mā by pleadinge shal not defete any estate of

Cap. 5.

franketenement by force of any such condicion, but if he shewe the prose of such condicion in writinge. &c. except it in some especial cause, but of chatels reals, as of a lease made for terme of yeres or of grauntes of wardes made by wardeins in chiualrie, and of such other. &c. A man may plede ỹ such giftes or grauntes were made vpon condicion. &c. without shewinge of any writinge of condicion. And in the same maner a mā may de of giftes and grauntes of chatels personals and of contractes personals. &c.

¶ Also though that a man in some actyons may not plede a condicion that toucheth and concerneth franke tenement without shewinge of writinge therof as it is aforesayd, yet a man may be holpen vpon suche condicion, by the verdyt of twelue men taken at large, in assise of Nouel disseisin, or in some other actyon, where the iustices wyll take the verdyt of the twelue iurours at large.

¶ As put the case that a man seised of certayne lande in fee, letteth the same lande to a man for terme of lyfe without dede vpon condicion to yelde to the lessour certayne rent, and for defaut of payment a reentre. &c. by force of which lease, the lessee is seased as of franketenemente, and after the rent is behinde, by which

the

the lessoure entrethe into the lande, and after ꝯ lessee arreineth an assise of nouell disseisin of the land againste the lessoure the which pleadeth that he doth no wrong ne no disseisin, and vpon this the assise is taken. In this case the recognitours of the assise may saye and yeld to the Justices theyr verdite at large vpō al the matter, as to say, that the defendant was seased of the lande in his demesne, as of fee, and so seased, let the same land to ꝯ plaintife for terme of his lyfe, yeldinge to the lessour such an annuell rente payable at such a feaste. &c. and vpon such a condicion, that if the rent be behind at any such feaste, that it ought to be payed, that then it shalbe leful to the lessour to enter &c. by force of which lease the plaintiffe was seased in his demesne as of franketenemente, and after that the rente was behinde at such a feast in such a yeare, &c. for which the lessour entred into the land vpon the possession of the lessee ꝯ prayeth the discrecion of the Justices, if this be a disseisin done to the plaintiffe or not. And that for this that it appeareth to the Justices, that this was no disseisin done vnto the plaintife. In so muche that the entre of the lessour was lawfull vpon ꝯ the Justices ought to giue iudgemente, that the playntife shall take nothinge

Cap.5.

Capi.5. by his writ of assise. And so in suche case the lessour shalbe holpen, & yet was there neuer writinge made of the condicio, but the iurours may in this case haue knowledge of the condicion that was declared and rehersed vpon the lease made.

¶ In the same manner it is, of a feoffement in fee, or a gyfte in the tayle vpon condicion, though neuer writynge were made therof. &c. And as it is sayde of a verdite at large in assise. &c. in the same maner it is in a writte of entre founded vppon disseisin, and in all other actyons where the iustices will take the verdite at large, there where the verdite at large is made the maner of the entre, entre is put in the issue.

¶ Also in suche case where the enquestes maye saye theyr verdite at large, if they will take vppon them the knowledge of the lawe vpon the matter, they maye saye theyr verdite generallye, as it is put in theyr charge, as in the case aforesaid they maye wel saye that the lessoure dysseased not the lessee if they wil. &c.

¶ Also in the same case, yf the case were suche, that after this, that the lessour had entred for defaut of paiment. &c. that the lessee hadde entred vpon the lessour and him disseised, in this case if ỹ lessour arrayneth an assyse agaynste the lessee, the

the lessee may barre him of his assise, for Cap.fo.
he may pleade against him in barre how
the lessour that is plaintife made a lease
to the defendaunt for terme of his life, sa
uinge the reuercion of the plaintife, the
which is a good plee in barre, in so much
that he knowledgeth the reuercion to be
to the plaintife, and in this case the plain
tife hath no matter to helpe him, but the
condicion made vpon the lease, and that
he may not plede, for that he hath no wry
ting of it, & in so muche that he maye not
answere to the barre, he shalbe barred.
And so in this case ye may se, that a man
is disseised, and yet shal he haue no assise.
And further if the lessee be playntife, and
the lessour defendaunt he shall barre the
lessee by verdite of the assise. &c. But in
this case where the lessee is defendaunte
if he wil not plede the saide plee in barre,
but plead no wronge nor disseisyn, then
the lessoure shall recouer by assise. &c.
Causa qua supra.

¶ A L S O because suche condycyons
be mooste commonly putte and specified
in dedes indented, somme littell thynge
shall be sayd here to the my sonne of en-
dentures, and of a dede poll conteynyng
condicions.

¶ And it is to witte, that if the Inden
ture be by pertite, or tripartite, or quadri

Capi.50

partite, all the partes and the Indentur
be but one dede in the lawe, and euery
parte of the Indenture is of him selfe
as great force and effect as al the parte
togither. And the making of indentur
is in two maners. One is to make the
in the third personne, an other maner is
to make them in the first personne. The
makinge in the thirde personne is, as in
such fourme.

Hec indentura facta inter R. de P. ex
vna parte, & V. de D. ex altera parte testa
q̄ predictus R. de P. dedit et concessit
& hac presenti carta indentata confirma
uit prefato V. de D. talem terram. &c. ha
bend. et tenend. sub condicione. &c. in cu
ius rei testimonium partes predicte si
gilla sua alternatim apposuerunt. Vel
sic. In cuius rei testimonium vni parti
huius indenture penes prefatum V. de
D. remanenk predictus R. de P. sigillu
suum apposuit, Alteri parte eiusdem In
denture penes. R. de P. remanent. Idem
V. de D. sigillum suum apposuit. Data.
&c. This indenture made betwene R. of
P. of the one parte, and V. of D. of the o
ther, witnesseth that the forsayde R. of
P. hath giuen and graūted, & by this pre
sent dede indēted, hath confirmed to the
forsaid V. of D. suche lande to haue. &c.
vpon the condicion, &c. In witnes where
of

The forme of an endenture in the third person.

the partes before sayde interchaunge-
ably, haue put to theyr seales, or els thus
in witnes wherof to one parte of this in-
denture remayning with the sayde W. of
D. the forsayde R. of P. hath put to his
seale, and to the other parte of the sayd in-
denture remayning with the sayde R. of
P. the sayd W. of D, hath put to his seale
giuen. &c. Lay.fo.

☞ Such indenture is called indenture
made in the third personne, for this that
the verbes. &c. be in the third person, and
such forme of indentures is of more sure
makinge, for this that it is more com-
monly vsed. The making of indentures
in the first person is in such forme.

Omnibus christifidelibus ad quos pre-
sentes litere indentate peruenerint A. de
B. salutem in domino sempiternã. Scia-
tis me dediſſe conceſſiſſe, et hac presenti
carta mea indẽtata confirmaſſe, C. de. D
talem terrã. &c. Vel sic. Sciant presentes
et futuri, quod ego A. de B. dedi cõceſſi
et hac presenti carta mea indentata con-
firmaui C. de D. talem terram. &c. haben
dã & tenẽdã sub condicione sequenti. &c.
In cuius rei teſtimoniũ tã ego predicti
A. de B. q̃ predict C. de. D. his indẽtoris
sigilla nra alterum apposuimus. Vel sic.
In cuius rei teſtimoniũ ego p̃fat⁹ A. vni
parti, huius indenture sigillũ meũ appo-

Cap.5.

sui alteri vero parti eiusdē indenture p̄dictus .C. de .D. sigillū suū apposuit. ꝛc.

In enden-ture in the fyrst person.

¶ To al true chr̄isten people, to whom this p̄sent writing endented shal come .A. of .B. greting in our lorde euerlasting. Knowe ye me to haue giuen and graūted and by this my p̄sente dede indented to haue confirmed to .C. of .D. such land. ꝛc. Or els thus. Knowe al men ꝑ be p̄sente and thē that be to come, that .I. A of .B. haue giuen and graūted, and by this my p̄sente dede indēted, haue confyrmed to .C. of .D. such lande. ꝛc. to haue. ꝛc. vpon condicion folowynge. In wytnesse wherof, as well I the sayde .A. of .B. as the forsayde .C. of .D to these indētures interchaungeably haue put to our seales or elles thus. In wytnesse whereof I the forsaid .A. of .B. to one part of this indēture haue put to my seale, and to ꝯ other parte of the same indenture the forsayd .C. of .D hath put to his seale. ꝛc.

¶ And it semeth that such an endenture made i the firste person, is as good in the lawe as the endenture made in the third person, when bothe parties haue thereto put theyr seales, for if in ꝯ indēture made in the third personne or in the firste person if mencion be made, that the grauntoure hathe sette his seale onelye, and the grauntee not then in the indenture only

the

the dede of the graūtour. But where mē cion is made, that the graūtee hathe set his seale to the endenture. ⁊c. then is the endenture as wel the dede of the graūtee as the dede of the graūtoure. And thus it is the dede of bothe, and also euery parte of the endēture is the dede of both partes in such case. ⁊c. Lay. f.

¶ Also if estate be made by endenture to a manne for terme of hys lyfe, the remaynder to an other in fee vpon certain condicion. ⁊c. And if a tenaunte for terme of lyfe hath set his seale to the part of the endenture, and after dyeth, and he in the remainder. ⁊c. entreth in the lande by force of his remaynder. In this case he is holden to performe all the condicions compryſed within the indenture, as the tenaunt for terme of lyfe ought to do in his lyfe, and yet he in the remaynder neuer sealed any parcel of the endenture but the cause is, that in so muche that he entreth and agreeth to haue the lande by force of the endēture, he is holden to performe the condicion within the endenture if he wil haue the land.

¶ Also if a feoffemente be made by dede poll vpon condicion. ⁊c. and for this that the cōdicion is not performed, the feoffour entreth and hath the possessiō of the dede poll, if the feoffee bring an action of

Cap.5. that entre against the feoffoure, it hath ben questioned, if the feoffour may plede the condicio. &c. by the dede polle against the feoffee. And some haue said naye, in so much that it semeth vnto them, that a dede poll, and the propertie of the same dede appertaynethe to him to whome the dede is made, and not to him that made the dede. And in so much that such a dede apperteyneth not to ỳ feoffour, it semeth to them ỳ he may not plede this dede. &c. And other haue sayd the contrarye, and haue shewed diuers causes. One is if the case be such, that in the action betwene them, if the feoffee pleade the same deede and shew this to the court: In this case in so much that the dede is in the court, ỳ feoffour maye shewe to the courte, howe in the dede by diuers condicions to be performed of the part of the feoffee and for this that they bee not performed he entred, &c. and thereto shall be receyued by the same reason when the feoffoure hath the dede in hande, and sheweth it to the courte, he shall be well receyued to pleade of this. &c. And namelye when the feoffoure is priuie to the dede, for he oughte to be priuie to the dede, when he made the dede.

The pleadynge of a condicion by a dede poll.

¶Also if two men make or do a trespalle to an other, the whiche releaseth to one

of them by his dede, all actions personel Cap.5.
&c. Notwithstandinge he suethe an
action of trespas against the other, then
the defendaunt may wel shewe, that the
trespas was done by him and an other
his felowe, and that the plaintife by the
dede that he sheweth forth released to his
felowe al actions personelles, and yet
such dede appartayneth to his felowe,
and not to him, but for this that he maye
haue aduantage by the dede, if he maye
shewe the dede to the courte, he may wel
pleade therfore. By the same reason in
the other case, when the feoffoure ought
to haue aduantage by the condicion com
prised within the dede poll.

Also if the feoffee gaue or graunted
the dede poll to the feoffour, such graunt
shalbe good, and then the dede and the
propertie of the dede appartayneth to the
feoffoure. And when the feoffour hathe
the dede in hande, and pleadethe it to the
courte, it shall be rather taken, that he
came to the dede by a lawful meane, the
by a forfeyture meane, and so it semethe,
that they maye well pleade suche a dede
polle, that comprehendeth condicion. &c.
Aye haue the dede in hande. &c. Ideo
semper quere de dubiis, quia ex rationes
peruenitur ad legittimam rationem.

Estates that men haue vpon condicion

in

Law. j. Estate vpon condition in lawe.

in the lawe be such, that haue a condicion by the law annexed to them, though it be not specified in writinge, as if a man graunt by his dede to an other, the office of a parkship of a parke, to haue and occupie the same office for terme of his life, the estate that he hathe in the office is vpon condicion in the lawe, that is to say, that the parker wel & truly shal kepe the parke, and do this that to his office appertayneth to do, or otherwyse that it shalbe lefull to the graūtour & his heires to put him out, and to graunt that to an other if he will. &c. and suche condycyon as is vnderstande by the lawe to be annexed to any thynge is as stronge, as if the cōdicion were set or put in wryting.

¶ In the same maner it is of graūtes of offices of stewardes, constables, bedyls, bayliffes, and other offices, but if suche offices be graunted to a man to haue & to occupie by him or by his deputie, as he ought by the lawe, then if the office be occupied by him or his deputie, as it ought by the lawe to be occupied, this sufficeth for him, or els the graūtour or his heires may put him out, as it is afore sayde.

¶ Also estates of landes or tenementes may be vpō condicion in the lawe though that vpon the estate made there was no rehersall made of the condicions. As

put

Lay. 5.

putte the case that a lease be made to the husbande and his wife to haue & to holde to thē during the couerture betwene thē in this case they haue estate for terme of their two liues, vpon condicion in lawe that is to saye, if one of them die, or if deuorce be made betwene them, that thē it shalbe leful to the lessour & his heyres, to entre. &c. that they haue estate for terme of their two lyues, it is proued thus euery man that hath estate or franktenemēt in any lādes or tenemētes, either he hath estate in fee, or in fee taile, or for terme of life, or for terme of his owne life, or for terme of an others lyfe, & by suche lease they haue franktenemēt. But they haue not by ỹ graunt fee, nor for tayle, nor for terme of an others lif. Ergo thei haue estate for tme of their .ii. liues, but this is vpō condicion in ỹ law in forme aforesaid And in thy case if they make wast, ỹ lessor shal haue against thē a writ of wast supposing by his writ. Quod tenet ad terminū vite. &c. But in his plee he shal declare how & in what maner ỹ lease was made In the same maner it is if an abbotte make a lease to a mā to haue and to hold to him duringe the time that the lessour is abbot. In this case ỹ lessee hathe estate for terme of the life of the same abbotte but this is vppon condicion in lawe

A generall writte and a specyal declaracion.

that

Lay. 3.

that is to saye, that if the abbot resy
or be deposed, that it shall be lefull to
successours to entre, &c.

¶ Also a man maye see in the boke of
sise. An. 38. E. 3. a plee in assise in
forme that ensueth. Assise of nouell
seisin was some tyme brought ag
one .A. that pleaded to the assise and
founde by verdit, that the ancestor of
playntife deuised the tenementes to
solde by his executour, to make distri
cion of the money for his soule, and
was found ỳ incontinent after the de
of the testatoure, a man tendred to hy
a certaine sum of money for the tenem
tes, but not to the value, & that the exec
tour after held ỳ tenemẽtes in his ow
hande by two yere, to the entent to ha
solde the tenementes the more deere
some other, and it was found that he h
all this while after taken the profyt
of the tenementes to his owne vse, wi
out any thinge doing for the soule of t
deade. Mombraye iustice said.
executour in suche case is holden by t
lawe to make the sale as sone as he m
after the death of the testatour, and it
found that he refused to make the sale,
so the defaut was in him, & also by fo
of the deuise, he was holden to putte
the profites of the said tenementes to t

dede

Cap.vi.

lordes vse, & it is founde that he hath ta-
ken them to his owne vse and to another
vsant is i him, wherefore it was adiud-
ged that the plaintife shulde recouer.
And thus it appeareth by ỹ sayd iudge
ment, that by force of the said deuise, that
the executour had none estate nor power
of the tenementes but vppon condycyon
by the lawe. And manye other cases there
be of estates vpon condicyon in the lawe
in such cases it nedeth not to haue shew-
ed any dede, reherlyng the condycyon.
for that the lawe in it selfe pourpor-
teth the condicion. &c. Ex paucis dictis in
telligere plurima possis.
More shall be sayde of condytyons in
the nexte chapiter, in the chapiter of relea-
ses, and also in the chapiter of dyscontyn-
uance.

Dyscentes. Cap.vi.

Dyscentes that take away entres be
in two maners, ỹ is to saye, where
the discent is in fee, or in fee taple.
Discentes in fee, that take away entrees
where a man seased of certayne landes
& tenementes is by an nother dysseased,
& the disseysour hath issue, and dieth of
the estate seased, nowe the tenementes
descende to the issue of the dysseysoure by
force of the lawe as heyre vnto hym.
And for this that the lawe putteth the

Cap. 6.

landes or tenementes vpon the issue, and the issue commethe to the tenementes by course of the lawe, and not by his owne dede, the entre of the dysseisin is taken away, and is therof put to sue his writte of entre vpon disseisin agaynst the heyre of the disseisour, to recouer the lande.

¶ Discentes in the taile that take away entrees be, where a man is disseised, and the disseisour gyueth the same land to an other in the tayle, and the tenaunt in the tayle hath issue and dyeth seased of such estate, and the issue entrethe, in this case the entre of the dysseysie is taken away, and he is put to sue agaynste the issue of the tenaunte in the tayle, a writte of entre vpon disseisin. &c.

I discent in the tayle.

¶ And note wel, ỹ in such discentes that take awaye entres, it behoueth that a man dye seased in his demesne as in fee, or in his demesne, as in fee tayle, or vseng seased for terme of lyfe, or for terme of an others life, shal neuer take away entre. &c.

¶ Also a discente of reuercyon or of remainder shal neuer take away entre. &c. if a man disseise me, and the disseysie leaueth the tenementes to a man for terme of lyfe, the remainder in fee, yf he in the remaynder haue issue and dye, and after the tenant for terme of lyfe dyeth, the issue of hym in the remainder entreth

Lay. 60

yld case the entre of ỳ disseisee is not ta-
ken away, so ỳ in such cases, that take a-
ny entres by force of discentes: it be-
houeth that he that dyeth seased haue fee
and franketenement, or fee tayle & frāke
tenement at the tyme of his dyeng, or els
suche discent taketh not away entre.
Also as it is saide of discentes that dis-
cende to the issue of them that dye seased.
ꝛc. ỳ same law is, where they haue none
issue, but the tenementes discende to the
brother, sister, vncle, or some other cosin
of hym that dyeth seased. ꝛc.
Also yf there be lorde & tenant, and the
tenant be disseised, and the disseisour alie-
neth to an other in fee, and the alyene
dieth without heyre, & the lorde entre the
as in his eschete. In this case the disseisee
may enter vppon the lorde, for this that
the lord commeth not to the lande by dys-
cent, but by way of eschete. Ꝑ. 5. H. 9. 7
Also yf a man seased of certayne lande
in fee, or in fee tayle vppon condition, to
yelde certayne rent, or vpon other condy-
cion, though that such tenaunt seased in
fee, or in fee tayle dye seased, yet if the cō-
dicion be broken in theyr lyues, or after
theyr decesse. ꝛc. this taketh not away the
entre of the feoffour, nor of the donoure
or theyr heyres, for this that the tenā-
te is charged with the condycyon, and

Lay.C. the estate of the tenancy is cõdicional, whose hãdes soeuer the tenancy cõme
¶Also if such a tenant vpon condicio dilleysed,& the dilleysour ye thereof sed,and the lande descendeth to the hey of the dilleysour,nowe the entre of the nant vpon cõdicion that was dilleased taken away,but yet if ꝯ condicion be ken.&c.then may the feoffoure or the nour,ꝯ made the estate vpõ condicion, theyr heyres enter.&c.causa qua supra
¶Also if a dilleysour die seised,and heyres enter.&c.the which endoweth wyfe of the dilleisour of the thyrde pa of the tenementes,in this case as to thyrd part that is allygned to the wyfe dower,incontynente after that the wy entreth,& hath the possessyon of the sa thyrde parte,the dilleysie maye lawfull enter vpõ the possession of the wife in same thyrd part.And the cause is for that when the wyfe hath her dower, shalbe adiudged in possessiõ immedia by her husband,and not by the heire, so as to the franckstenement of the sa thyrde parte,the dyscent is defeted.
¶And thus ye maye se, that before dowemente, the dylleysye myght not ter in any parte.&c.and after the dow mente, he maye enter vppon the wy and yet he may not entre vppõ the o

fo

two parties, that the heyre of the disseisee hath by dyscente.&c. Cap.6.

Also if a woman be seased of landes in fee, whereof I haue right & title to enter, if the woman take an husbande and haue issue betwene thē, and after ỳ wife dieth seased, and after that the husbande dieth and ỳ issue entreth.&c. In this case I may enter vpon the possession of the issue, for this that the issue commeth not to the tenementes immediatly by discent after the death of his mother, but by the death of his father.&c. Contra. 9.H.7.B. 37.H.

Also yf a dysseisour enfeoffe his father in fee, and the father entreth and dyethe of such estate seased, by whiche the tenementes discend to the disseisour as to the sonne and heyre.&c. In this case the disseisee may wel enter vpon the disseysoure, notwithstandinge the discent, for ỳ as to the disseisin the dysseisoure shall be iudged in but as disseisoure, not wyth standing the discente. Quia participes criminis.&c.

Also if a man seased of certayne landes in fee, hath issue two sonnes, and dyeth seased, and the yonger sonne entrethe by abatement in the lande, the which hath issue, and of this diethe seased, and the tenementes discende to the issue, and the issue entreth into the lande, in this case This case is iudged. 4. of Ed. 4. in the. 5. b. lefe.

Capi.6. the elder ſon or his heire maye enter by
the law vpon ỹ iſſue of the yõger ſon, not
withſtandinge the diſcent, for this that
when the yonger ſon abated in the land
after the death of his father before any
entre of the elder made, there the law in
tendeth that he entred in the land & clay
ming it as heyre vnto his father, and for
this that the elder brother claymeth by ỹ
ſame title, ỹ is to ſay, as heire vnto ỹ fa
ther, he & his heires may entre vpon the
iſſue of the yonger brother, not withſtan
ding the diſcent. &c. for this ỹ they claime
by one ſelfe title. And in the ſame manes
it ſhalbe, if there be many diſcentes from
one iſſue to an other iſſue of the yonger
ſon. &c. But in ſuch caſe if ỹ father were
ſeaſed of certayne landes in fee, and hath
iſſue two ſonnes and dieth, and the elder
ſonne entreth and is ſeaſed. &c. And after
ỹ yõger brother diſſeaſeth him, by which
diſſeiſin he is ſeaſed in fee, and hathe iſ
ſue, and of ſuch eſtate dieth ſeiſed, the
elder brother may not enter, but is put
to his writ of entree vpon diſſeiſin for to
recouer the land. And the cauſe is for ſo
that the yonger brother commeth to the
teneme̅tes by a wrong diſſeiſin made
to his elder brother. And for that wrong
the lawe may not take it, that he clay
as heyre to his father, no more then

ſtraung

Lay. 6.

straunge person that had disseised the el-
der brother, that never had any tytle. &c.
And so may ye se the diuersitie where
the yonger brother entreth after the death
of his father before any entre made by ỹ
elder brother in such case. &c. and where
the elder brother entreth after the deathe
of his father, and after is disseised by the
yonger brother. &c. In ỹ same maner it is
if a mā sealed of certain land in fee, hath
issue two doughters, and dyeth, and ỹ el-
der doughter entreth in ỹ land claymīng
all the lande to her, & thereof only taketh
the profites, and hath issue, and dieth sea-
led by which her issue entreth, whyche is-
sue hath issue & dieth sealed, & the second
issue entreth. Et sic vltra. Yet the yonger
doughter or her issue, as to the halfe may
enter vpō euery issue of ỹ elder doughter
notwithstanding such discent, for this ỹ
they claime by one selfe title. &c. But in
such case if both two systers come into ỹ
land to entre, after ỹ death of their father
and therof were seased, and after ỹ elder
sister therof disseased the yonger sister of
that that to her belongeth, and thereof is
seased in fee and hath issue, and of suche
estate dyeth seased, by whyche the tene
mentes discende to the issue of the elder
sister, then the yonger systers nor her

Capi.6.

heyres may enter.&c. Causa qua supra.
¶ Also if a man seased of certayne lande in fee, hath issue two sonnes, and the elder brother is bastarde, and the yonger brother mulier and the father dieth, and the bastard entreth and claimeth as heir vnto his father, and occupieth the lande al his life, without any entre made vpon him by the mulier, and the bastard hath issue, and dieth of such estate seased in fee and the lande descendeth to his issue, and his issue entreth.&c. in this case ỳ mulier is without remedi, for he maye not entre nor haue any actiõ for to recouer the lãd for this that there is an auncyent lawe in such case vsed.&c. But it hath bene an opinion of some men, that this shalbe vnderstande where the father hathe a sonne bastarde by a woman, and after he wedeth the same woman, & after ỳ spousayl he hath issue by ỳ same womã a sonne or a doughter mulier, & after ỳ father dyeth &c. If such a bastarde entre &c. & hathe issue, and dieth seased.&c. thẽ shall the issue of such a bastard haue the land clerely to him as it is afore saide.&c. And not any other bastarde borne of the mother ỳ was not espoused to ỳ father. And thꝰ semeth a good and reasonable opinion. For such a bastarde borne before the espousels solemnised betweene his father and his mo-

ther

ther by the lawe of holy churche, is inu-
yer, though that by the law of the lande
he is a baſtard borne, & ſo he hath colour
of entre as heire to his father, for this ỳ
he is by one lawe mulier, that is to ſaye,
by the lawe of holy churche. But other-
wiſe it is of a baſtarde, that hath no ma-
ner of colour to entre as heir in ſo much
ỳ he may not by no law be ſayde mulier
&c. for ſuch a baſtard is ſayde. Quaſi nul
lius filius. But in ỳ caſe afore ſayd, wher
the baſtard entreth after the death of his
father, and the mulier putteth him oute
ỳ after the baſtard diſſeaſeth the mulier
and hath iſſue, and dieth ſeaſed, and the
iſſue entreth, thē the mulier may haue a
writ of entre vpon diſſeiſin againſt the iſ
ſue of the baſtarde, & recouer the land. &c
And ſo may ye ſe ỳ diuerſity, where ſuch
a baſtarde continuethe his poſſeſſion all
his life without any interruptiō, & wher
the mulier entreth and interrupteth the
poſſeſſion of ſuch a baſtarde. &c.

☞ Alſo if a childe within age haue
title or cauſe to entre into any landes or
tenementes vppon an other, that is ſey-
ſed in fee, or in fee tayle of the ſame lādes
or tenementes, if ſuche a man that is ſo
ſeaſed, die of ſuche eſtate ſeaſed, and the
landes deſcēde to his iſſue during ỳ time
that the childe is within age, ſuch diſcēt

Cap.6. shal not tolle the entre of the chylde but that he may entre vpō the issue, that is in by discent. &c. for this ỹ no laches shal be adiudged i a child wīn age i such case.

¶ Also if the husbande and hys wyfe as in right of the wife haue tytle & right to entre in the tenementes, that an other hath in fee or in fee tayle, & such a tenant dyeth seysed. &c. In suche case the entre of the husbande is taken away vpon the heire that is in by discente. But if the husbande die, then the wife maye well enter vppon the issue which is in by dyscente, for this that ỹ laches of the husband shal not turne the wife and her heires to prejudice nor damage, in such case, but that the wife and her heires maye well entre vpon such heyre, which is in possessiō of the tenaunce by discente. And this shalbe vnderstande of a tytle of entree, whyche falleth duringe the couerture.

¶ But the courte holde. Ỹ.9.Ỹ.7. where suche a tytle is giuen to a woman soole which after taketh a husband, which entreth not but suffereth a discent, &c. there it is otherwyse: for it shal be sayd, it was the womans foly to take such a husband that entred not in tyme, &c.

¶ Also if a manne that is not of whole mind, that is to say in latyn, Qui non est cōpos mētis, hath cause to entre into any such

such tenementes, if suche discente, vt supra, be had in his lyfe durynge the tyme that he was out of his minde, and after deth, his heyre may wel enter vpon him that is in by discente. Cap.6.

And in this case ye may se, that the heire may enter and yet his auncester ỹ hadde the same tytle may not entre, for he that was out of his minde, at the time of such discent, if he wyll entre after such a discente, if action vppon thys be shewed agaynst him, he hathe nothinge for hym to pleade or to helpe hym, but to say, that he was oute of his mynde at the tyme of such discente. &c. And he shal not be receyued to saye this, for this that no man of full age shalbe receiued in any plee by ỹ lawe or falsifie, or disable his owne person but the heire may wel disable ỹ person of his ancester, for his owne aduantage in such case, for this that no laches may be adiudged by the law, in him that hath no discrescion in such case.

And if such a mã out of his minde make a feoffemẽt. &c. he may not entre ne haue a writ called Dum non fuit compos mẽtis. &c. causa qua supra. But aft his deth his heir may wel entre or haue the same writte Dum non fuit compos mentis, at his election. The same lawe is, where a childe within age maketh a feoffemente C.12.E.4.

and

Cap.6. and dieth, his heires may entre or haue a writ of Dum fuit infra etatem. &c.

C.12.E.3. ¶ Also if I be disseased by a childe within age, that alieneth to an other in fee and the aliene dieth seased, and the tenmentes descend to his heire, the child being within age, myne entre is taken away. But if the childe within age entre vpon the heire that is in by discent, as he wel may, for this that ỹ same discēt was during his nonage, thē I may wel entre vpō the disseisour, for this ỹ by his entre he hath defeted and adnulled the discent.

¶ And in the same maner it is, where I am seised, and the disseisour maketh a feoffement in fee vpon condicion. &c. and the feoffee dieth of such estate seised. &c. I may not entre vpon the heir of the feoffe. But if the cōdicion be brokē, so that by such cause ỹ feoffour entreth vpō ỹ heire now may I wel entre for this that when the feoffoure or his heires entred for the cōdiciō broken ỹ discēt is vtterly defeted.

¶ Also if I be disseised, & the disseisoure hath issue, and entreth into relygion by force wherof the landes descended to his issue, in this case I may wel enter vpon the issue, and yet there was a discent. But for this that such discente commeth to the issue by the fathers dede, that is to saye, for this that he entred into relygion

hym.&c. and the dyscente commethe not to hym by the acte of god, that is to saye, by deathe.&c. myne entre is coungeable and lawfull: for if I arrayne assise of nouell dysseysyn agaynste my dysseysoure, thaugh that he after entreth into religion, this shall not abate my writte. But my writte this notwithstandynge, shall abyde in his force and strengthe, and my recouerye agaynste hym shall bee good. And by the same reason, the discente that came to his issue by his owne dede maye not put me frome myne entre.&c. Lay.6.

¶ Also yf I lette vnto a man certayne lande for terme of twentye yeres, and another dysseyseth me, and putteth oute the termoure, and dyethe seysed, and the tenementes descende to his heyre, I maye not entre, and yet the lessee for terme of yeares may well enter, for this that by hys entre he puttethe not out the heyre that is in by dyscente frothe francke tenemente that vnto hym descended. But onelye to haue the tenementes for terme of yeares, the whiche is no expulsynge of the franketenemente of the heyre that is in by dyscente. But otherwyse it is where my tenaunte for terme of lyse is dysseysed.&c. Causa qua supra.

¶ Also it is sayde, that yf a man seased of tenementes in fee by occupacion in

A dyuersitie.

Cap. 6. in tyme of warre, & dieth therof seased in tyme of warre & the tenementes discend to his heyre, such discent putteth no man out of his entre. And this a man may plee in a writ de Ayel. An. 7. E. 2.

¶ Also no dyenge seased, where all the tenementes commeth to an other by succellyon, shal take awaye the entre of any person. &c. As of prelates, abbotes, priours, deanes, or persones of churches, or other body politike. &c. though that there were twenty dyenges seased, and twenty succellyons, thys putthe no man from hys entre, for this is not properlye called dyscent. &c. More shalbe sayde of diuersitie in the nert chapiter.

¶ Contynual clayme. Cap. vii.

CContynual clayme is where a man hath ryghte and tytle to entre into any landes or tenementes, where an other is seased in fee, or in fee tayle, if he that hath title to entre make continual clayme to the landes and tenementes before the dyenge seased of hym that holdeth the tenementes, then thoughe suche a tenant dye therof seyse, and the landes and tenementes dyscēde to his heyre yet maye he that hathe made suche clayme, or his heyres enter into the landes & tenementes so dyscēded, bycause of the con-

tynual

contynuall clayme made, notwithstandinge such dyscente. Cap. 7.

¶ If in case a man be dysseysed, and the dysseysee make the contynuall clayme to the tenementes in the lyfe of the dysseysour, thoughe the dysseysour dye seased in fee, and the lande discendeth vnto his heyre, yet maye the dysseysee enter vpon the possessyon of the heyre, notwithstandinge such dyscente.

¶ In the same maner it is, yf tenaunt for terme of lyfe alyene in fee, he in the reuercyon or he in the remaynder maye enter vppon the alyenee. And yf suche alyene dye seased of suche estate, without contynuall clayme made to the tenementes, before the dyenge seased of the alyenee, and the tenementes bycause of the dienge seased of the alyene discend vnto his heyre: Then maye not he in the reuercion, nor he in the remaynder entre. But yf he in the reuercion, or he in the remainder that hath cause to enter vpō the alyence, made contynuall clayme to the tenementes, before the dyenge seased of the alyenee, then such a man maye enter after the death of the alyene, as wel as he myght in his lyfe. &c.

¶ Also if lādes be let vnto a mā for terme of his life, & remaynder vnto an other for terme of life, & remainder to & thyrd man

in

Cap. 7.

in fee, if the tenant for terme of lyfe alie
in fee, and he in the remaynder for term
of life maketh continual claime vnto
land before the dyeng seased of the
nee, & after the alienee dyeth seased
and after he in the remaynder for term
of life, dieth before any entre made by
In this case he in the remaynder in
maye entre vpon the heyre of the alie
bycause of cõtinual claime made by
that had the remaynder for terme of
life, for this that such ryght that he h
to enter, shall go and remayne to hy
the remaynder after hym, in so m
that he in the remainder in fee, may
enter vpon the alienee in fee, durynge
lyfe of him in the remainder for term
lyfe, & bicause y he might not then m
continual claime, for none may make
tinual claim but whē he hath tytle to
ter. &c. But it is to se to y imp chylde,
and in what maner such cõtinual cl
shalbe made and this to learne well, t
thynges there be to be vnderstande.

In what wyse claym ought to be made.

¶ The fyrst thing is, if a mā haue
to enter in anye landes or tenemente
diuers townes within one shyre, if h
ter in any parcel of the landes or ten
tes, that be in one towne, in the nam
al the lãdes or tenemẽtes, into which
hath ryghte to enter, with all the to

in the same shyre, by such entre he hathe good possession and seisin of such lan-des or tenementes, wherof he hathe tytle to enter, as if he had entred in dede into euery parcell, and this semeth great reason. For if a man wyll enfeoffe an other without dede, of certayne landes or tene-mentes that he hathe in manye townes, within one shyre, and he will delyuer seisin to the feoffee of parcel of the tenemen within one towne in the name of all the landes or tenementes that he hath in the same towne, and in all the other townes &c. all the sayd tenementes, &c. shall passe by force of the said iuery of seysyn made to whom such feoffement in such maner is made. And yet he to whō such iuery of seisin is made, hathe no ryghte in the landes and tenementes in al the townes, but byeause of the iuery of seysyn made of parcell of the landes or tene-mentes in one towne. A multo fortiori. Semeth good reason, that when a man hath tytle to entre into landes or tenemēts in diuers townes, within one shyre, that any entre by hi made, that by the entre of him made for parcell of the tene-mentes in one towne, in the name of all the landes and tenementes, to the which he hath tytle to enter within ꝯ same shire that he is seisyn of all in him, and by such

Cap.7. entre he hath possessiō and seisin in deed as if he had entred into euery parcel. ¶ The seconde thinge is to vnderstande that if a man haue title to entre into any landes or tenemētes, if he dare not enter in the same landes or tenementes, nor any parcel therof, for doubte of beatynge or for doubte of maymynge, or for doubte of deathe, if he go and approche as nigh the tenementes as he dare for such doubte as is aforesayde, and claime by woordes tenemētes to be his, incontinent by such claime he hathe a possession and seisin of the tenementes, as wel as if he hadde entred in dede, thoughe he hadde neuer possession or seisin of the same landes or tenementes before the saide claime. And that the lawe is such, it is wel proued by a plee of an assise in the boke of assise. 38. Edwarde. 3. the tenour of whyche ensueth in this fourme.

¶ In the countye of Dorset before the Iustices, it was foundē by verdite of assise that the plaintife, which had right by discent of heritage, to haue the tenements put in plaint at the time of ye death of his ancestor, which was dwelling in ye towne where the tenemētes were, & by woordes claimed the tenemētes among his neighbours, but for dout of death, he durst not approche vnto the tenementes, but

Cap.7.

...ch alise, and vpon the matter found it ...awarded, that he shuld recouer. &c.

The third thing is to vnderstand with ...what time the claime, that is sayd con...nuall claime shall serue and helpe hym ...maketh the clayme and his heyres. ...as to this it is to wit, ỹ he that hath ...to enter whē he wil make his claim ...dare approche vnto the land, thē it ...oueth him to go vnto the lande, or to ...ll of it, and make his clayme, and if ...dare not approche vnto the lande for ...or dzede of beatig, maiming or deth ...it behoueth him to go & to approche ...ye as he dare toward the land or per...rof and make his claime. And if hȳ ...ssarie that occupieth the land dieth ...ed in fee, or in fee tayle, within a yere ...day after such claime made, by which ...enementes descende vnto his son as ...vnto him, yet may he that made the ...enter vppon the possession of the ...&c. But in this case after the yeare ...the day that suche clayme was made ...other claime be made, if ỹ father ...die seased, ỹ morowe after the yeare ...daye, or at another day, after. &c. ...not he that made ỹ claime ēter. ...therfore if he that made the clayme ...sure alway, that his entre shal not ...n away by such discēt, it behoueth

Cap.7. him, that he within a yeare and the daye after the first claim made, to make another clayme in the forme aforesayd. And within the yere and the daye after the second claime made, to make ỳ third claime in the same maner, and within the yere & the daye after the third claime, to make an other claime, and so forthe, that is to say, to make an other claime within every yere and daye next after every claime made duringe the life of his adversary and thẽ at what time that hys adversary dieth seased, his entre shal not be taken away by no such discent. And such claime made in such maner is most commonly taken and called continual claime of hym that made the claim. But yet in case aforesayd where his adversary diethe within the yere and the daye next after the first claime this is in the lawe a continual claime: in so much ỳ his adversarie dieth within the yere & the daye after the first claim, for it is no nede for him that made the claim to make any other clayme, but at ỳ time that he will within ỳ same yere and the daye. &c. And if his adversarie be disseised within the yere and the daye after the claime, & the disseisour dieth seased within the yere and the daye. This dieng seised shal not hurt him that made the claim, but that he may enter

For whosoeuer he be, that dyeth seased Cap. 7.
within ỹ yere & the day after such claime
that shal not hurt him ỹ made ỹ claime,
but that he may enter though there were
many dyenges seased, and many dyscētes
within the yere and the day. &c. nota hoc.
Also yf a man be dysseysed, and the
disseysour dieth seysed within the yeare,
and the day ner after the disseysin made,
whereby the tenementes descende to his
heyre in this case the entre of the dysseye
is taken awaye, for the yere and the
day that shulde helpe the disseisee in such
case. &c. shall not be taken from the tyme
the title of entre growē vnto him, but
only from the tyme of the clayme by him
made in tyme afore sayde. And for that
cause it shalbe good for suche a disseysee,
to make his claim. &c. as short time
as he may after the disseisin. &c.
Also if suche a disseisoure occupie the
land by forty yeres or mo without anye
claime made by the disseisee. &c. and the
disseysee by lyttle space before the deathe
of the disseisour, make a claime i ỹ forme
aforesaide, yf it so fortune that within a
yere & a day after suche claime the disse-
sour disseised. &c. then the entre of the
disseisee is coungeable. And for this it
shalbe good for such a man that made no
claime that hath title to enter. &c. when he

Capi.7.

hereth that his aduersary lyeth lycke, to make his clayme.&c.as it is layde in the cases put before,where a man hath title to enter bycause of a dysseysyn.&c. The same lawe is,where a man hath ryght to enter bycause of any other tytle.&c.

¶ Also in this layde prelydentes maye ye know my chyld.ii.thinges. One is where a man hath tytle to enter vpon a tenaunt in tayle,yf he make anye suche clayme to the lande.&c. The is the state of the tayle defeated,for that clayme is as an entre made by hym,and is of the same effect in the lawe,as yf he were vppon the same tenementes, and had entred in the same tenementes as is aforesayde. And even when the tenant in tayle immedyately after such claime continueth his occupacion in the same tenemētes, this is a disseisin made of the same tenemētes vnto him that made the claime. Et sic per cōsequens, the tenaunt then hath fee symple.&c.

¶ The second thing is that as ofte as he that hath ryght to entre,maketh suche clayme,and this notwithstanding his aduersary cōtynueth his occupacion,as he was the aduersarye dothe wronge and disseysin to hym that made the clayme. For thys cause so often may he that made the same clayme,for euery suche wrong and disseisin made vnto him,haue a

Capi.7.

of trespas. Quare clausū suum fregit. &c Cap.7.
and shal recouer his damages. &c. and he
may haue a writ vpō the estate of kynge
Richarde the seconde made the fifte yere
of his reigne, supposinge by his writte
that his aduersarye hath entred into the
landes or tenementes of hym that made
the clayme, where his entre was not
good nor giuen to him by the lawe. &c. &
by suche action he shall recouer hys da-
mages. &c.

¶ And if the case be such, that the aduer
sary occupie the tenementes with force
and armes, or with a multitude of peo-
ple at the time of such clayme. &c. Then
after such clayme he y made the clayme
maye for euery such time haue a writ of
forcible entre, vpō the statute of an. 8. H.
6. cap. 6. & recouer his treble damages. &c

¶ Also here is to se, if the seruaunte
of a man that hath title of entre, may by
the commaūdemēt of his mayster make
continuall claime for his mayster in his
name, and it semeth that in some cases
he maye do this, for yf he by his com-
maundemente come to any parcel of the
lande and there maketh claime. &c. in the
name of his maister, this claime is good
enough for his maister, for this that he
hath done all that that it behoueth hys
mayster to do in such case. &c.

Capi.7. ¶Also yf a maister say vnto his seruaunt that he dare not go vnto the lande, nor any parcell of the lande, for to make his clayme. &c. and dare not approche nyghe vnto the sayd lande, saue to such a place called Dale, and commaundeth his seruant to go to the same place of Dale, and there to make a clayme for hym. &c. if the seruaunt so do. &c. this semethe as good a clayme for his maister as yf he had been there in his owne person, for this yf the seruaūt did al that his maister durst, and ought to do by the lawe in such case.

¶Also if a mā be so sycke or so lame that he may not in no maner come to the lande nor to any parcell of the same, or yf that he be a recluse that maye not bycause of his order go oute of his house. &c. yf such a maner person commaunde his seruaunt to go and make clayme for hym. &c. the seruant dare not go vnto the land, nor to any parcell therof for doubte of beating, maymyng, or death. &c. and for that cause such seruaunt commeth as nigh vnto the lande as he dare for such drede, & maketh such clayme. &c. for his maister, it semeth that such clayme for his maister, is good and stronge ynoughe in the lawe, for that his maister shuld be in to great mischefe for it may wel be, that such a person is sycke or lame, or recluse, can not find

seruaunt

seruaunt that dare go vnto the land, nor to any parcel of it, to make the claime for hi. But yf the maister of such a seruaunt be in good health, & may and dare wel go to the tenementes, or to parcell of it, to make hys clayme for hym. &c. yf suche a maister cōmaūd his seruāt to go to some parcel of the lande, and make clayme for hym. &c. And whē the seruant is in going to the cōmaūdemēt of his mayster, he seeth by the way such thinges, that he dare not go to any parcel of the lande for to make any clayme for his mayster, and for that cause he goeth as nygh vnto the lande as he dare, for doubte of death, and there he maketh claime for his maister, & in the name of his mayster. &c. it semethe the doubt in the lawe in such case shall be if such clayme anayleth to his maister or not, for this that the seruaunt dyd not all thys that hys mayster at the tyme of commaundement durst haue done.

Cap. 7.

Also some haue saydy where a man is in prison, & is dissesed & the dysseysour dieth seised, during the tyme that the dissesse is in prison, by whiche the tenementes dyscende to the heyre of the dysseysour, they haue sayd that this shal not hurte the dissesie that is in prison. &c. but that he may wel entre, notwithstanding the dyscente, for this that he maye not

Cōcerninge this matter seke the opinions of the iustyces Pa. 6. H. 6.

Cap. 7. make contynual clayme whē he was in
prysone. And also yf suche a one that is in
prison be outlawed in an action of dette
trespas, or in appeale of robbery. &c. he
shal reuert such outlawry by wryt of er-
roure. &c. because he was in prison at the
tyme of outlawrye agaynst hym pronoun-
ced. &c.

¶ Also if a recouerye be hadde by de-
faute against such a one that is in prison
he shal anoyde the iudgemente by a wryt
of errour, for this that he was in prison
at the time of such defaut made. &c. And
because that such matters of record shal
not hurt them that be in prison, but that
it shalbe reserued. &c. A multo fortiori, it
semeth that a matter in dede, ỳ is to say
suche discent had when he was in prison
shall not hurt him. &c. specyallye for this
that he may not go out of prison to make
continual claime. &c.

¶ And in the same maner it semethe to
them, where a man is oute of the realme
in the kinges seruyce, for busines of the
realme, and if suche a man be dysseysed
whē he is in the seruyce of the king, and
the disseisour dieth seased, suche discent
shall not hurte the dysseisee, but for this
that he might not make continual claime
&c. it semeth vnto them, that when he co-
meth againe into Englād, he may enter

vpon the heire of the disseisour.&c. For Exp.76
where a man shall reuerse an outlawry
that is pronounced against him, during
the tyme that he is in seruyce.&c. Ergo
vnto forthwith, he shal haue ayde by the
law in the other case.&c.

Also other haue sayde, that yf a man
be out of the realme, though he be not in
the kynges seruyce, yf such a man beyng
out of the realme, be dysseysed of landes
or tenementes within the realme, & the
disseisour disseised.&c. the disseisee beyng
out of the realme, it semed vnto theim
that when the dysseysee commethe into
the realme, that he may wel enter vppon
the heyre of the disseisour.&c. this semeth
vnto them for two causes.

One is that he ỳ is out of ỳ realme maye
not haue knowledge of ỳ disseisi made
vnto him by vnderstandyng of ỳ law, no
more thē ỳ a thig done out of the realme
may be tryed within the same realme by
the othe of .xii. men.&c. & to compel suche
a man by ỳ law, to make cōtinual claime
which by the vnderstandyng of the lawe
ys haue no knowledge or cognysaūce of
suche disseisin made or done, this shall be
inconuenient, and namelye when such a
disseisin is done vnto hym, when he was
out of the realme, and also the dyeng sei-
sed was done, when he was out of the re-
alme

Cap.7. alme. For in such case he may not by
sybylytie after the common presum
on, make no contynuall clyame. W
therwyse it shalbe if the dysseysye
within the realme at the tyme of the
seysyn, or at the tyme of the dyeng
of the dysseysour. ℣.6. ℣.7.

¶ An other matter they allege for a p
whē the statute of kynge Edwarde th
the.34. yere of his raygne was made
whiche estatute no clayme is out. &c.
lawe was such, ỹ if a fyne were leuied
certain landes or tenementes, if any
was a stranger to the fyne had ryght
haue, and to recouer the same lādes o
nemētes, if he came not & made hȳ clai
to it wīn a yere & a day ner after the fi
leuied, he shalbe barred for euer. Quia
dyuersitie. cebat finis, finē letibus imponebat. An
that the lawe was such, it is proued by
statute of westmister the seconde. De d
nis condicionalibus, where it speake
that if the fyne be leuyed of tenemente
geuē in the tayle. &c. Quod finis ipsi iu
sit nullꝰ, nec habeant heredes huiusmod
aut illi ad quos spectat reuertio, licet fu
rint plene etatis in Anglia, et extra pris
nam, necesse apponere clameum suum.
So it is proued, that yf a straunger th
hath right vnto the tenemētes, if he were
out of the realme at the tyme of the fin
leuyed

ed. &c. shal haue no damage, though Lay. 7.
he made not his claim. &c. though that
such fine were a matter of record. By grea
reasone it semeth vnto thē that a dyf-
fin & a discent ỳ is matter in deede, shall
not so greue him that was disseised whē
he was out of the realme at ỳ time of the
disseisin, and also at the time that the dis
seisour died seased. &c. but ỳ he may well
enter, notwithstandinge such discente.
Also enquire if a man be disseased, and
he arrayne assise agaynste the disseisour
and the recognitours of the assise chaunt
for the plaintife, & the iustices of ỳ assise
shal be aduised of their iudgement vntyll
the next assise. &c. and in the meane seasō
the disseisour dieth seised. &c. if the sayde
byte of ỳ assise shalbe taken in lawe, for
the said disseise a continual clayme, in so
much that no defaut was vnto him. &c.
Also enquyre if an abbotte of a mona
sterye dye, and during the time of vacā
cyon, a man wrongefullye entreth in cer
tayne parcell of lande of the monasterye
claymynge the lande vnto hym and hys
heyres, and of that estate dyethe seysed
and the lande discendeth vnto his heyre,
and after that an abbotte is chosen, and
made abbot of the same monasterye a que
stion is, if the abbot may entre vpon the
heyre or not. And it semeth to some, ỳ the

abbotte

Cap. 8.

abbot may wel enter in this case, for
that the couent in time of vacacion
not personable to make cõtinual clai
for no more then they be personable
sue an action, no more be thei perso
to make continual claime, for the co
is but a deade body without heade, for
time of vacacion a graunt made
them, or by them is voyde, and in
case the abbot may not haue a writ o
tre vpon disseisin agaynste the heire,
this that he was neuer disseised.

¶ And if the abbot may not entre in
case, than he shal be put vnto his wri
righte the whiche shall be harde for
house, wherby it semethe to them,
the abbot may wel entre. &c.

Quers de vobis, legẽ bene discere si vis
Quierere dat sapere, q̃ sũt legittima ver

¶ Releller. Cap. viii.

Releases of all rygh

RElelles be in diuers maners, that
is to say, releases of all right that
man hath in landes or tenemẽtes
and releases of actions reals, and per
nals and of other thinges. Releases
al the right that a man hath in landes
tenementes. &c. is cõmonly made in
forme or to such effect. Nouerint vni
si per presentes me A. de B. remisisse,
laxasse et omnino de me et heredib⁹ me
quiet clamasse. Vel sic pro me et hered

nels quietus clamasse C. de D. totū Cap. 8,
atum et clamesi que habui, habeo
uolumodo in futurum habere pote
er in vno mesuagio cum partiñ in
um.&c.

And it is to vnderstande, that these
es remisisse & quiet clamasse, be of
effecte as these wordes relaxasse.&c.
also these wordes, which be commō-
in such dedes of releses .&c. ỹ is
derstand. Due quotiusmodo in futu
habere poterd, be as wordes void in
lawe, for no right passeth by a release
the right that the releassour hathe at
time of his release made. For if there
father and son, and the father be dys-
d, and the son lining, his father rele
by his dede to the disseisoure all the
ght that he hathe, or maye haue in the
tenementes without clause of war
ye.&c. and after the father dyethe
son maye lawefullye enter vppon the
ssion of the disseisoure, for this that
hadde no righte in the lande when he
ased, that is to saye, in the lyfe of hys
, but the right defended vnto hym
scente after the release made by the
h of his father.&c.

In a release of al ỹ right that a mā A grounde.
in certain lādes.&c. it behoueth vnto

him

Cap. 8. him, to whom ỹ releale is made in ſuch
caſe, that he haue a freholde in the
in dede, or in the lawe at the time
releaſe made .ꝛc. for in euery caſe
he, to whom the releaſe is made,
freholde in dede, or in lawe, at the
of the releaſe made .ꝛc. then the
is good. Franketenement in the
as if a man haue diſſeiſed an other,
therof dieth ſeiſed, by the which the
mentes diſcend vnto his ſonne, how
that his ſonne enter not̄ the tenem
yet he hath a franketenement in the
which by force of diſcente is throwen
pon him, & therefore the releaſe made
him, ſo beinge ſeiſed of franketene
in the lawe is good inoughe. And
take a wife ſo beynge ſeyſed in the
howbeit that he neuer entre in dede,
wife ſhal haue therof her dower.

¶ Alſo in ſuch caſe of releaſes of all
howbeit that he to whome the releaſe
made, ne hath any thyng in the fran
nement, neyther in dede nor in lawe,
the releaſe is good inough. As if the
ſeiſour haue let lande that he had by
ſeiſin to an other for terme of his lyfe
uing the reuercion to hi, if the diſſeiſ
his heires releſe vnto the diſſeiſour
right .ꝛc. that releſe is good, for this
he to whom the releaſe is made,

reuercyō at ỳ time of a releſe made Cap. X.

ỳ ſame maner it is, if a leaſe be
to a mā for terme of life, ỳ remain
vnto an other for terme of an others
he remainder vnto the third in fee
, the remainder vnto the fourthe in
a ſtranger that hath right vnto the
releſe al his right vnto any of the
remainder, ſuch releſe is good for
that euery of them hath a remainder
in him ſelfe, yet if the tenaunt for
of life be diſſeiled, & after he that
right, the poſſeſſion being in the diſ
oure, releaſeth vnto one of them ỳ to
om the remainder was made, all his
te, &c. that releaſe is voyde, for that,
he ne had in hym no remaynder in
at the tyme of the releaſe made. Et
, that euery releaſe made to hym that
a reuercyon or a remynder in deede
ll ſerue and helpe hym that hathe the
hetenemēt, as wel as him to whom
releaſe is made, yf the tenaunt haue
releaſe in his hande, &c.

ỳ ſame maner it is, where a releſe
ade to a tenāt for terme of life, or to
naunt in the tayle, this ſhal enure vn-
em in the reuertyon, or to them in
remainder, as wel as to the tenaunt
ake tenementes, and ſhall haue as
antāge of ỳ, if ỳ they may ſhew it.

Lay. 8. ¶ Also if there be lorde and tenaunt
the tenaũt is disseised, and the lorde
seth to the disseisee all the right th
hath in the seignorie, or in the land,
release is good, and the seignorie
tinct. And this is bycause of the p
that is betwene the lord and the dis
for if the goodes of the disseisee be t
and of them the disseisse sueth a Re
are against the lorde, he shal compe
lorde to anowe vpon him, and if he
anowe vpon the disseisoure, then b
the matter shewed the auourse shal
bated, for the disseisee is tenaunt to
in right and in lawe.

¶ Also if lande be giuen to a man in
tayle reseruing vnto the donour and
heyres a certaine rent, if the donee d
seised, and after the donour releaseth
the donee and to his heires al the ri
that he hath in the land, and after th
nee entreth into the lande vpon the
seisour, in this case the rent is gone,
this that the disseisee at the time of
release made was tenaunt in right
in lawe vnto the donoure and anow
of fine force ought to be made vpon
by the donour for the rent behinde.
But yet nothinge of the right of the
that is to say, of the right of the rent
shal passe by such release, for this that
don

...ree to whom the releſe was made the Cap. 2.
...nothing in the land, but only a right
...is the right of the lande ne may not
...by ſuch releaſe to the donee.
...In the ſame maner it is yf a leaſe be
...to one for terme of life, reſeruyng
...the leſſour and to his heyres certayne
...if the leſſee be diſſeiſed, & after the
...ſoure releaſeth to the leſſee and to his
...es al the righte that he hathe in the
...es, and after the leſſee entreth, how
...that in that caſe the rent is extincte
...nothinge of the right of the reuercio
...eth. &c. Cauſa qua ſupra.
But if there be very lord and very te
...t, and the tenaũt maketh a feoffemẽt
...fee, the which feoffee neuer became te
...nt to the lord. &c. if the lorde releaſe to
...feoffour all his right. &c. that releaſe
...in al voyde, for this that the feoffoure
...h no right in the land, and he is no te
...nt in right to the lorde, but only tenãt
...for the auouerie to be made, & he ſhall
...ner compel the lorde to auowe vppon
...m, for the lorde may auowe vppon the
...nee, if he will, otherwiſe it is, where
...verye tenaunte is diſſeyſed, as in the
...afore ſayde for if the verye tenaunte
...is diſſeyſed holdethe of the Lordes
...knightes ſeruyce, and dyethe, hys
...es beynge within age, the lorde ſhal

Cap. ij.

haue and leafe the warde of the h
And so ye shal not haue the warde o
feoffour that made the feoffement t
&c. and so it is great diuersitie betw
these two cases.

¶ Also if a man enfeoffe an other, &
his lande vpon truste, and to the ent
that he shall perfourme his last will,
the feoffoure occupyeth the same la
the will of his feoffees, and after the
fees releafe by their deede, vnto the fe
four all the right, &c. This hath bene
tion if such releafe be good or not.
some haue said that such releafe is v
for thy that no priuitie was betwene
feoffees & their feoffour, in so much
no leafe was made after such feoffem
by the feoffees, to they? feoffour to h
at their will, &c. And some haue sayde
contrary, & y for two cauſes. One
when such feoffement is made vpon
fidence to perfourme the will of the
four, it shalbe vnderstande by the
that the feoffour by & vi ought to occ
the lande, at the will of his feoffees,
it is a maner of priuitie betwene the
if a mā make a feoffemēt to other p
and they incontinent vpon the feoffe
will and graunt that the feoffour shal
cupie the lande at they? will, &c.

¶ An other cauſe they alege, that if

be worth. rl. s. by yeare. &c. Then Lay. s.
a feoffour shalbe sworne in assises,
in other enquestes in plees reals, &
in plees personels, of what great sū
soeuer that ꝑ plaintifes wil declare
and this is by the common law of the
Ergo this is for a great cause and
cause is for that ꝑ law wil, that such
tours and their heires ought to occu
and to take & occupye and enioye
ner profites, issues, & reuenues. &c
though ꝑ tenemēts wer their owne
but interruptiō of the feoffees, not
standing such feoffement. Ergo the
law geueth a ꝑfitte betwene such It is holden
ours, and their feoffees upon confi in. 25. H. 7.
&c. For which cause thei haue fait fol. 2. that the
such releases made bi such feoffees feoffour shall
confidence to the feoffoure, or to hys haue an actiō
&c. so of occupieng the lande, shalbe of trespas
inough. &c. Note this is the better against hym
ion as it semeth. &c. Quere, for this that hath
y no lawe at this daye. thus.

lso releases after ꝑ matter in dede
thus haue they? effecte by force to
ye the estate of them, to whom the
is made, as if I betentaine lande
mā for terme of yeres, bi force wher
ꝑ possessed, and after I release vn
to al the right that I haue in the
same not more nor les, or put in thes

Cap. 80

dede, and deliuer vnto him the dede
he hath estate but for terme of his
the cause is for this that when the
rāder the remainder is in a mā
will enlarge by his relese the estate
tenaūt, &c. he shal haue no greater
but in the maner and forme, as if
releassour were seased in fee and
his dede make estate to one in a cer
forme, &c. & deliuer vnto him seas
forme of the same dede, if in suche d
feoffement, there be no worde of in
cause, &c. thē he hath estate but for
of lyke, &c. And be it is in suche re
made by him in the reuersiō, or in
mainder. For if I let lande to a m
terme of his life, & after I release to
al my right without more sayeng
release, his estate is not enlarged.
I release vnto him, and to his he
his body engendred, thē he hath fre
¶ And if I release vnto hī & to his
then he hath fee simple. And so in
releases that go to the enlargement
estate of any man, it behoueth in
case to specifie in the dede of the
what estate he is to whō the release is
shall haue, &c.

¶ And some dedes of releases shal
to set and put the right of him
the release to him, to whō the rele

Cap.9.

...e a man is disseised, & he releseth
...he disseisour at the right ỳ he hath
...ase ỳ disseisour hath his right to
...where his estate before was wrong
...by the release it is lawful & right.
...here note wel, that when a man is
...ur fee simple of any landes or tene
...s, & another will release vnto him
...right that he hath in the same tene
...it nedeth not to speake of ỳ heires
...m, to whome the release is made for
...that he had fe simple at the tyme of
...release made, for ỳf the release were
...to him & to his heires for one daye
...one houre, this shalbe as strōg vn
...m the law as if he had released to
...and to his heires, for whē his right
...gone from him at one time by ỳ re
...without any condicion. &c. to hym
...fre simple it is gone for euer. But
...ea mā hath a reuercio or a remain
...fee simple at the time of the relese
...; there if he will release to the te
...for terme of yeares, or for terme of
...to the tenaunte in the tayle, it be
...th to determine the estate that he to
...ỳ relese is made shal haue by force
...same release. For this that suche
...a goeth to enlarge the estate. &c. of
...whō the relese is made. But other
...is where a man hath but a righte

Cap. 8.

vnto the lande, and hath nothyng in
reuertion, nor in the remaynder in
For if such a man release al his ri
one that is tenaunt of the frankte
there al hys ryghte is gone, thoug
no mencion be made of the heires
to whō the release is made. For if
landes or tenementes to a man for
of his lyfe, if I after release vnto hi
enlarge his estate to behoueth y I re
vnto hym and to his heires of his
engendred, or to him and to his
by suche wordes to haue and to ho
him & to his heires males of his
gotten, or by suche lyke wordes, &c.
therwise, he hath no greater estate
had before. But if my tenāt for ter
lyfe let the same land out to an oth
terme of the life of his lesse, & rem
vnto an other in fee, now if I relea
him to whō my tenāt letted for ter
life, I shalbe barred for euer thoug
no mencō be made of his heires, for
that at the tyme of the release made,
no reuercion, but onely a right to
reuercō. For by such a release vnder
der ouer that my tenaunt made, & th
my reuercion is discōtinued. And
release shal enure vnto him & rem
to haue aduātage of the as wel as
nant for terme of lyfe, for to y ente

for terme of lyfe, and he i the re- Cap. 8.
mayndre be as one tenaunte in the law,
he as yf one tenaunt were sole seised
his demesne as of fee, at the tyme of
the release made vnto hym. &c.
Also yf a man be dysseysed by two, yf
releas vnto one of them, he shal holde
hym selfe on of the lande, and by such
wise he shal haue sole possessyon, and
be in the lande. But yf one disseisour
make two in fee, and the disseisee re-
lease to one of the feoffees, this shall en
ure to bothe the sayde feoffees. And the
cause of the dyuersitie betwene these to
is sufficyent ynoughe.
If I be disseised, & my disseisoure
disseised, & I release to ỳ disseysoure or
to disseisour, I shal neuer haue actyon
ne entre vpō his disseisour, for this that his
disseisour hath my right by my release. &c
Also it semeth in this case, that if there
be twenty disseisours eche after other,
and I release to the laste disseysoure, he
shall barre al the other of their actyon &
their titles. And the cause is as it semeth
is this that in manye cases where a mā
hath a lawful title to enter, though he
doo not, eche such shal defete al mene titles
by his release. &c. But this is not in euery
case, as shalbe sayde afterwardes.
Also yf my disseisour lette the tenemēt

Cap.8.f

tes wher of he disseised me, to a man for terme of life, & after ỳ tenãt for terme of life, alieneth in fee, and ỳ release to the alienee. &c. thẽ my disseisour may not ter cã qua supra. thoughe ỳ at one time the alienacion was to his disheritãce.

¶ Also if a man be disseised, the wyfe hath a son within age, and dieth, and after the son within age the disseisee dieth seised, and the lande discendeth to his heire, and a straunger abatethe and after the son of the disseisee, whẽ he cometh vnto ful age releaseth al his right &c. to the abatour. In this case the heire of the disseisoure shalbe barred of his entre for this that the abbatour hath the right of the son of the disseisee, by his release and the entre of the son was lawfull. And for this that he was within age at the tyme of the discent. &c.

¶ But if a man be disseised, and the disseisoure maketh a feoffement vpon condicion, that is to saye, to yelde vnto him certain rent, & for the defaut of paiment, an entre. &c. if the disseisee release to the feoffee vpon condicion, yet nẽdeth he not the estate of ỳ feoffee vpon condicion, for notwithstanding such release yet ỳ estate abideth vpõ condicion, as it was before.

Cum hoc concordat opinio omnium iuristarum. ℣.9.℣.7

¶ In ỳ same maner it is where a man

disse-

Lap. 8.

...sed of certaine lande, and the disseisee ...granteth a rent charge out of the ...lande, though that after the disseisee ...leth vnto the disseisour, &c. yet the ...charge abideth in his force. And the ...is i these two cases, that a mā shall ...none aduātage by such release, that ...be against his owne proper acceptāce ...against his owne grāt. And though ...some haue said, as is aforesaid, that ...the entre of a mā is congeable vp...a tenant, if he release to the same te...that this release auayleth, vnto the ...so as if he had entred vpon the te...and after enfeoffed him, &c. this is ...me in euery case, for i the first case ...these two aforsaid cases, if the disseisee ...enter vpon the feffee vpō condicō ...after enfeoffeth him, then the co...ny ...is al put aside and voide. And so in ...the seconde case if the disseisee enter, and ...feoffe hym that graunted the rente ...charge, then is the rent charge annulled ...and auoyded. But it is not auoyded by ...any such release, without entre made, &c ...Also if a man be disseised by a coppise ...within age, of which alieneth in fee, and ...the alienee dieth seised, and his heyre en...reth, beynge the alienoure within age. ...Yet it is in the election of the dysseysee ...to haue a writ of Dum fuit infra ...

...etatem

Lay. 1.

relatent, or a writte of right against the heyre of the alienee, and which writte the two so euer he taketh of them ought to recouer by the law. And also may enter into the land without any recovery by action, and in this case the estate of the disseisee is taken away. And this case if the disseisee release his right to the heyre of the alienee, and after the disseisour vrigeth a writ of right against the heire of the alienee, and he tenant put in vise vpon the cleve right. &c. the grand assise ought by the lawe to finde that the tenant hath more clere right. &c. than the disseisour, for this y^t the tenant hath the right of the disseisee, by his release which is more auncient and more cleare right then the right of the disseisour, for by such release all the right of the disseisee passeth vnto the tenaunt and to the tenant. And to this some haue said that in such case where a man hath right to lands or tenementes, but he entre not lawful if he release vnto the tenant all the right. &c. the such release shall enure by waye of extinguishment. As to this it may be said, that this is trouth as to him that releaseth, for by his release hath dismissed him for euermore of all right as to his person. But yet the right that he had may well passe and go to

tenaūt by his releale, for it ſhulde be Cap.8.
inconuenient, that ſuch an auncient rightе
ſhulde be extinct all vtterly by his releaſe
for it is commonly ſayd, that rygh̄te
may not die. But a releaſe that goeth by
waye of extinguiſhment againſte all A releaſe in
perſonnes, is where he, to whome the re- dyenge by
leaſe is made, may not haue this that hi- waye of extin-
ſelfe is releaſed: as if there be lorde and guiſhment.
tenaūt, and the lorde releaſeth vnto the
tenaūt all the right that he hath in the
manoꝛ, or all the rygh̄t that he hathe
in the ſame. &c. ſuch a releaſe goethe by
waye of extinguiſhement againſt al per
ſonnes. For this that the tenaunte may not
take the releaſes of him ſelfe.

Sir Iohn Maries ſaith is of a releaſe made
by tenaūt of the land of a rent charge
or a common paſture. &c. for this that
the tenaūt may not haue that, by way of
graūting it, vnto hi is releaſed. &c. ſo ſuch
releaſes ſhal enure euermoꝛe by way of
extinguiſhemēt againſt al perſons. &c.
And to proue by the graūd aſſiſe ought
to be ſo, for the tenaūt i the caſe alſo ſaide
in the haro oftentimes in the lecture vpō the
ſtatute of weſtminſter the.ii.ca.iii. that
ſaith, In caſu quando vir amiſerit
ſine defectum tenementum quod fuit vx
oris ſue. &c. that is at the common
lawe before the ſtatute, if a leaſe were
made

Lay. 2.

made to a man for terme of lyfe, the remainder ouer in fee, and a ſtraunger by fayned action recouer againſt the tenaunt for terme of life by defaute and after the tenaunt dieth, he in the remainder had no remedy before the ſtatute, for that he hath no poſſeſſion of the land. But if the remainder had entred vpon the tenaunt for terme of life, and diſſeiſed him, and after the tenaunt entreth vpon him, and the tenaunt for terme of life leſeth by the recouere had by defaut, and dieth, now he in the remainder may well haue a writ of right againſt him that recouered, for that the miſe ſhalbe ioyned vpon the clere right. &c. And yet in this caſe the ſeiſin of him in the remainder was defeted by the entre of the tenaunt for terme of life. But peraduenture ſome will aſke and ſaye that he ſhall haue no more right in this caſe, for this that when the miſe is ioyned, it is ioyned in ſuche a maner that is to ſaye, that the tenaunt haue more cleare right to the land or the maner as he holdeth, then the demaundaunte hath in the maner as he demaundeth. And for this that the ſeiſin of the demaundant was defeted by the entre of the tenaunt for terme of life then he hath no right in the maner as he demandeth. Vnto this it may be ſaid that the

Cap. 8.

The effecte of these wordes modo et forma

wordes modo et forma prout. etc. thany be wordes of maner of pleadynge no wordes of substance, for if a mā ge a writ of entre. In casu prouiso nacio made vp the tenāt in dower dismheritance, and pleadeth of the nacion made in fee, and the tenaunt , that he alened not in the maner the tenaunte hath declared, and vp- this they be at issue, and it is founde erdite that the tenāt alened in the , or for terme of an others lyfe, the naūdant shal recouer, and yet the alie cion was not in the maner as the de- undant hath declared.

¶ Also if there be lord and tenaunte the tenaunt holdeth of the lord by fe lonely, if the lorde distrayne the te ant for rent, and the tenaunt brigeth itte of trespas agaynst his lorde for cattel so taken, and the lord pleadeth the tenāt holdeth of hym by fealty certaine rēt, and for the rent behind ame and distrayned. etc. and demaun judgement of the writte brought a him. Quare vi et armis. etc. the et saith, that he holdeth not of him by maner as he supposeth, and vpō this be at an issue, and it is found by ver that he holdeth of hī by fealtie tan in this case ỹ writ shall abate & yet

[ha

Cap. 8. he helde not of the lorde in the maner
the lord had sayd, for the maner of
fice is, whether the tenaunte holdeth
hi or not. For if he holde of him, the
that the lord distrayne y tenaūt for
seruices, y he ought not to haue, yet
writ of trespas. Quare vi et armis.
eth not against the lord, but shall a
Also in a writte of trespasse, of
king or of goodes taken, if the defend
plead nothing culpable in the maner
the plaintife supposeth, and it is fou
that the defēdant is culpable in anot
sowne within the same shire, or at an
ther day, thē the plaintife supposeth,
he shal recouer. And in mant other
theise wordes, that is to say, in the ma
as the demaundant or the plaintife h
supposed, be no matter of substance
that issue, for in a writ of right where
mise is ioyned vpon the clere right, it
as much to say, and to such effect, that
to writte, whether hathe the more r
the tenaunt or demaundant to the
so demaunded. &c.

Also if a man be dysseised, and
disseisour dieth seised. &c. and his son
heyre entreth in by discent, and the
seisee entreth vpon the heyre of the di
saur, the which entre is a disseisin. &c.
the heyre bringe assise or a writ of

nature of assise he shal recouer. But if Cap. 8.
heyre bryng a writte of right against
disseisee, he shall be barred. For this
when the graunde assise is sworne,
the is vpon the clere ryghte, and
upon the possessioner for yt the heire
the disseisour had brought assise of no
disseisin, or a writte of entre in nature
assise, and recouered against the disseis
and sued execucion yet maye the hey
haue a writ of entre in ye nature
the disseisin made vnto him by his
or he maye haue against the heire
writ of ryght. But if the heyre ought to
recouer against the disseisee in the case a
vyde by a writ of ryght, then all his Final iuge
ryght shalbe clerely gone, for this that a mente in a
iudgement shulde be gyue against writte of
which shuld be against reason where ryghte.
disseisee hath more clere ryght. &c.
now ye my son, that in a writ
ryght after this that the four knyghtes
sen in the graunde assise, the there
greater delay then in a writ of for
me after this that the partyes be at
issue. &c. and yf the issue be ioyned vp
battayle, then there is lesse delaye.
a release of all the ryghte. &c. in
case is good made vnto him, that is
tenant in the lawe, thoughe he
nothing in the tenementes, as in a

Cap. 5.

Wherfore quod redeat, if the tenaũt alie
the lande, hauinge the writte, and a
the demãdant releaseth to him al his righ
that release is good, for this that he
supposed to be tenaunt by the suit of
mandaũt, and yet he hath nothing in
lande at the time of the release made.
In the same maner it is if in a Pre
quod reddat, the tenant voucheth, and
vouche entreth in the garrantie, if a
the demandant releaseth vnto the vouc
al his right &c. this is good inough,
this that the vouchee, after this that
hath entred in the garrantie, is tenaũt
laiwe to the demaundant.

Also as to releases of actions reals,
actions personals, it is so that some
ons be mixt in the realtee, and in the
sonaltie, as if an action of waste be
gainst the tenaũt for terme of life, this
tion is in the realtie for this that
wasted shalbe recouered, & also it is
sonalty, for this that the treble dam
shalbe recouered for the wronge &
done by the tenaũt, & for this in this
on a release of actiõs reals is a good
barre, & so is a release of actiõs pers
In ỹ same maner it is of assise of
disseisin for this ỹ it is mixt in the
and in ỹ personaltie, but if suche
arained against the disseisour and

Cap. 8.

...t, the dilleisour may well pleade a re...
...e of actions personals, for to barre ...
...allise, for none may pleade release of ...
...ons reals, in allise but the tenant. &c
...Also in suche actions reals that be...
...eth to be sued againste the tenaũt of ...
...franketenement, if the tenaũt haue a ...
...ase of actions reals of the demandant ...
...de vnto hi, before the writ purchased, ...
...he pleadeth it, this is a good plee for ...
...demandant to saye, that he that plea...
...that plee had nothing in the frank...
...ement at the time of the release made, ...
...then he had no cause to haue actiõ re...
...gainst him.
...also in suche case where a man maye ...
...e in landes or tenementes, and also ...
...re he may haue of this an actiõ real ...
...th is giuen vnto him by the law, a...
...nst the tenaunt, if in this case the de...
...ndant release to the tenaunt al ma...
...actions reals, yet this taketh not ...
...the entre of the demaundaũt, but ...
...demaundant may wel entre notwith...
...ing suche release, for this that no...
...g is released but the action. &c.
...the same maner it is of thinges p...
...als. As if a man wrongfully take my ...
...es, if I release vnto hym all actions ...
...nals, yet I may by the law take my ...
...es out of his possession.

Cap. 8.

¶ Also yf I haue cause to haue a[n] of detinue of my goodes agaīst an o[th] though that I release vnto him al a[c]tions personals, yet I maye take my goo[des] sute of his possessyon, for this that [the] ryghte of goodes is released to hym [but] only the action. &c.

¶ Also yf a man be dysseysed, and [the] disseisour make the a feoffement vnto [o]thers persons vnto his vse, and the [dis]seisour continually take the the profytes [of] and the disseisee releasse the vnto hym [all] actions reals, and after he sueth ag[ainst] him a writte of entre in nature of a[n] assise bycause of the statute, for this that [he] take the the profytes. &c. Enquire how [the] disseisour shalbe holpē by ỹ sayd rel[ease] for if he wyll plede the release gener[al] then the demaūdant may say, that he [hath] nothyng in the franketenemente, at [the] tyme of the relese made, and if he ple[de] the relese specially, then it behoueth [him] to knowe a disseisin, and then may [the] demaūdant, entre in the lande. &c. by [the] conisance of the disseisin. &c. but p[er]uenture by especyal pleadyng he may [be] barred of the assise ỹ he sueth. &c. th[en] that the demaundant may enter. &c.

An. 31. H. 6. Ca. 3.

¶ Also if a man sue appele of felony [of] deathe of his auncestor against an [o]thers, though the appellāt release vnto the [de]

all maner actyons reals, and perso- Cap.8.
, this shal not helpe the defendaunt,
his that this appeale is not an acti-
reall, in so muche that the appellante
not recouer any realtie in suche ap-
. For suche appele is no action perso
In so muche that the wronge was
bnto his ancestor, & not bnto him
if he release to the defendante all ma-
of actions, thē it shalbe a good barre
the appeale. And so a man may se, that The best
lease of all maner of actions, is bet- releise of
then a release of al maner of actyons actions.
and personals. &c.

In appele of robbery, yf the defen-
wyl plede a release of the appellante
actions personals, this semethe no
for an action of appeale, where the
llant shal haue iudgement of death:
more high then an action personall
is not properly sayd an action perso-
and therefore yf the defendaūt wil
a release of the appellant, to barre
of the appeale, it behouethe him to
a release of all maner of actyons of
, as it semeth. &c. But i appeale of
me a release of all maner of actions
nals, is a good plee in bar, for this
in such an action he shal not recouer
mages. &c.

also yf a manne be outlawed in an-

Cap. 8.

action personal by prores of the origi-
and bryngeth a wrytte of erroure, if he
whose saite he was outlawed, wyl p
against him a releasse of al maner of
ons personals, this semeth no plee, for
the said action he shal recouer nothy
in the personaltie, but al onely to reu
the outlawrye, but a releasse of a wry
errour shalbe a good ple.

¶ Also if a man recouer det or dam
he releasse to the defendant al maner
tions, yet he may lawfully sue execu
by Capias ad satisfaciendū, or by el
or by Fieri facias, for execution by
writ may not be sayd an actyon: but
ter a yere and a day the plaintife wyl
a Scire facias, to knowe if the def
can any thig say, for what cause ỳ pl
tyfe shal not haue execution. &c. then
meth a releasse of al action shalbe a
plee in barre, but some haue thoug
contrary, in so much ỳ the wrỳt of
facias, is a writ of recouery, & is to
execution. But yet in so much ỳ vpo
same writ the defendant may plede
matters after the iudgement giue,
him fro executiō, as outlawrye, & o
other matters. &c. therefore it may
said action. &c. ¶ I trowe ỳ in a Sci
cias, out of a fine, a releasse of al ma
actiōs is a good plee in bar, but w

recouereth dette or damage, and it is
ended betwene the, that the plaintife
all not sue execution, then it behoueth
the playntyfe make a release to hym
all maner of actions.

Also yf a man release to an other all
ner demaundes, this is the best release
he to whome the release is made can
e, and most shal enure to his aduaun
ge, for by such a release of all maner of
maundes, all maner of actyons reals
personals, and actiõs of appeales be
ne and extincte, and all maner of ere
yons be gone and extincte. Nuere.
Fitz James chyefe Justyce of Eng
de held the contrarye, H. 19. H. 8. for
that entre might not properly be cal
a demaunde.

And if a man hath tytle to enter i any
des or tenementes, by such release his
e is gone, and if a man haue rent ser
, or rent charge, or cõmõ of pasture
by such release of al maner demaũdes
de to the tenaunt of the land whereof
seruice of the rente or the common is
nge out, or in what lande soeuer the
mon be, the seruyce and rent, and the
mon is gone and extyncte. &c.

Also if a man release to an other al ma
quarels, or al cõtrouersies or debates
ene the. &c. Enquire to what matter

Capi.8.

and to what effect such wordes erte[n]d.

Also if a man be bounde by his dede to an other in a certaine summe of money to pay at the feast of saint Wighell the next folowyng.&c. if the oblige before the said feaste, relese vnto ȳ obligeour al actions, he shalbe barred of the dutie for euer, & yet he myght haue none action at ȳ time of the release made.

But if a man let lande to an other for terme of yers, to yelde at the feast of saint Wighell next ensuynge.xl.s. and after the same feaste he releaseth to the lessee all actions, yet after the same feaste he shall haue an actiō of dette for the none payemente of the.xl.s. notwithstandynge the sayde release. Studye the cause of the diuersyte betwene these two cases.

Also where a man wyll sue a writ of right, it behoueth that he plede of the title of seisin of him, or of his auncestors, and that so that the seisin was in tyme of ȳ same kyng, as he pleadeth in his plee, for this is an auncient lawe vsed, as it appeareth by reporte of a certayne plee, in the hey of Notingham, l such forme as insueth.

Syr John Barrey brought a writ of ryght agaynste Reynolde allington, and demaunded certayne tenementes. &c. whyche was ioyned in the banke, and the ofrygynall, and the processe were sent before

before Justices errantes, where the parties came, & the twelue knyghtes were sworne, without chalenge of the parties for this that the election was made by assent of the parties of the foure knyghtes and the othe was suche, that I shall saye trouth. &c. whether R. of A. haue more right to holde the tenementes, that John Barrey demaundeth agaynst him by his writte of ryght, or John to haue the tenementes as he demaundeth, and for no thynge to lette to saye the trouth, as god me helpe. &c. wout sayenge to theyr eskempnge, and suche othe shalbe made in attaynte, and in battale, and in waging of lawe, for those writes sette euerye thing vnto an ende. Cap. 8.

¶ But John Barrey pleaded of the dysseisin of one Rause his auncestor in time of kynge Henry, and Reynolde vpon the myse ioyned tendered halfe a marke for the tyme. &c. And vpō this Yerle Justyce sayde to the graund assise, after this that they were charged vpon the clere ryght. Good men. Raynold gaue halfe a marke to the kyng to the entent, yf he fynd, that the auncestor of John was not seysed in tyme, that the demaundant hath pleded, ye shal enquyre no furder vpō the ryght and for this ye shal say to vs whether the auncestor of John Rause by name was set

sed

Cap.8. sed in the tyme of kyng Hery as he hath pleded or not, and if ye fynd, that he was not sealed in the same tyme, ye shall enquyre no more, & if ye fynde that he was sealed, then enquyre farther of the ryght. And after the graund assyse came with theyr verdyte, and sayd, that Rause was not sealed in the time of king H. wherby it was awarded, that Raynolde shulde holde the tenemētes against the demaūdant, and to him and to his heyres quite of John Barray and his heyres to the remenaunt, and John in the mercy.

¶ And the cause why that I have shewed to the my sonne this plee, is for to proue the matter aforesayde, whiche is sayde in the wrytte of ryghte. &c. for it semethe by this wrytte, that yf Raynolde had not tendered this halfe marke, for to enquyre the tyme. &c. then the grande assyse ought to haue bene charged onely of the clere ryght, and not of the possessyon. &c. And so that alwayes in a wryt of ryght yf the possessiō wherof the demaūdant pleadeth, be in the tyme of the kyng as he hathe pleaded: then the charge of the graunde assyse shalbe onely vpon the clere ryghte, though he that the possessyon were against the lawe, as hath bene said before in this chapiter.

¶ Conkyrmacion. Cap. ix.

Adede

A Dede of confyrmacyon is mooſte commōly made i ſuch fourme, or to ſuch effecte. Nouerint vniuerſi.&c.me A.de.B.ratificaſſe, approbaſſe, et confirmaſſe C.de D.ſtatum, & poſſeſſionem, quos habeo de & in vno meſuagio. &c.cum pertinētiis in N.&c. And in ſome caſe a dede of confirmacion is good and vaylable, where in ſuch caſe a dede of releaſe is not good nor vaylable. Lap.9.

As if I let lande to a man for terme of his lyfe, the which letteth the ſame lande to an other for tyme of.xl.yer⁹, by force of the which he is poſſeſſed, if I by my dede confyrme the ſtate vnto the tenaunt for terme of yeres, and after the tenaunt for terme of lyfe dyeth, duryng the terme of xl.yeres. I maye not after enter into the lande, duryng the ſame terme, yet if I by my dede of releaſe haue releaſed to ỳ tenant for terme of yeares, in the life of the tenaūt for terme of lyfe, this releſe ſhalbe voyde, for this ỳ then no priuite was betwene me and the tenaunte for terme of yeres, for a releaſe is not anatiable to the tenaunt for terme of yeres, but where a priuitie is betwene him & him ỳ releaſeth And this is to be vnderſtande where a man releaſeth the ryght of a franketenemēt, or inheritaūce. But in caſe where he that releſſed, hath right but for a certaine

terme

Lib.3. terme it is otherwyse. As if the tenāt for terme of yeres be put out by a straunger that maketh a lease to an other for terme of yeres, if he that was put out release to the second tenant for terme of yeres, this is a good release, Causa qua supra, & yet no priuitie is betwene them.

¶ Also yf I be disseysed, and the disseysour maketh a release to an other for terme of yeres, yf I release to the termour this is voyd, but if I confirme his estate this is good and effectuall.

¶ Also yf I be disseysed, and I confirme the estate of the disseysour, thē he hath a good and rightefull estate in fee symple, though that in the dede of confyrmacion no mēcīō is made of his heyres, for this that he had fee symple at the tyme of the confyrmacion. For in such case if the disseysee confirme the state of the disseysour to haue and to hold to him & to his heires of his body engendred, or to haue and to holde to him for terme of his lyfe, yet the disseisour hath fee simple and is seased in his demeine as of fee, for this that when his estate was confyrmed he had fee simple, and such dede may not chaūge his estate without entre made vpon him. &c.

¶ In the same maner it is, if his estate be confyrmed for terme of a daye, or for terme of an houre he hath a good estate

in fee

in fee symple, for this that his estate in fee Cap. 97
symple was ones confirmed. Quia cõfirmare idem est quod firmũ facere. ¶ Also yf my dysseisour make a lease for terme of lyfe ỳ remainder ouer in fee, yf I release to the tenant for terme of lyfe, this shall enure to hym in the remainder. But yf I cõfirme the state of the tenãt for terme of lyfe, yet after his decease he may wel entre, for this ỳ nothing is cõfirmed but ỳ estate of the tenãt for terme of lyfe, so that after his decesse I may wel entre. But whẽ I haue released al my ryght to the tenãt for terme of lyfe, this shal enure to hym in the remainder, or in the reuercõ for this that al my right is gone by suche release. But in this case if the dysseysee confyrme the estate & the title, to hi in ỳ remaynder without any cõfyrmacion made to the tenant for terme of lyfe, the dysseisee may not entre vpõ the tenant for terme of lyfe for this ỳ the remainder is depending vpon the estate of ỳ tenãt for terme of lyfe, and if his estate be defeted, ỳ remainder shalbe defeted by the entre of ỳ dysseysee. And is againſt reſõ, ỳ he shal by his entre defete ỳ remainder againſt ỳ cõfirmacõ.

¶ Also if there be two dysseysours, and the dysseysee releaſeth to one of them he shall holde his felowe oute of the lande but if the dysseisee confyrme the state of

the

the one, wythout moze speche i the dede some saye ý he shal not holde his felow out, but he shal holde ioyntly wyth hym for thys that nothinge was confirmed but his estate that was ioint. And for ý some haue sayde, that if two iointenants be, and the one confirmethe the estate of the other that he hath but a iointe estate as he had before, but if he haue such wordes in the dede of confyrmacion, to haue and to hold to him and to his heires all tenemētes, wherof mēcion is made i the confirmacion, then he hath estate sole in the tenemētes, & therfore it is a good & sure thing in euery cōfirmacion to haue these wordes to haue & to hold the tenemēte. &c. in fee or in fee tayl, or for terme of life, or for terme of yeares after as the case or the matter is, for after the entent of some if a man let lande to another for terme of life, and after he cōfirmeth his estate that he hath in ý same lād to haue and to hold his estate to him & his heires this cōfirmacio as cōcerning his heires is voide, for his heires can not haue his estate which was but for terme of hȳ life but if he confirme hȳ estate by these wordes to haue the same land to him and to his heires, this confirmacion maketh fee simple in this case to him in the land for this that those wordes, to haue and

to

to hold. &c. goeth to ꝯ land and not to the estate that he hath, so note ꝯ diuersitie. &c Lay. 9.

¶ Also if I let certaine land to a womā sole, for terme of her lyfe, the whiche taketh a husbande, and after I confirme ꝯ estate to the husbande and to the wife, to haue and to holde the lande for terme of their two liues, in this case the husbande holdeth not ioyntly with his wyfe, but holdeth the right of his wife, for terme of his life but this cōfirmaciō shal enure to ꝯ husbād by way of remainder for terme his life, if he suruiue his wife, but if I let land to a woman sole for terme of yeres which taketh an husbande, and after I cōfirme the estate to the husbande, and the wife, to haue and to hold the land for terme of bothe theyr lyues, in this case they haue ioynt estate in the franketenement of the lande, for this that the wyfe had no franketenement before.

¶ Also if my disseisour graunte a rente charge out of the lande, wherof he disseised me, and I reherse the said graūte do confirme the same graūt, and all that is comprised within the sayd graunt and after I enter vpon the disseisour, enquire in this case if the lande be discharged of the rent, yea, or no.

¶ Also if a person of a church charge the lande of his church by his dede, and after

the

Cap. 9.

the patronee, and the ordinarie confirme the same graūt, and al that is compriſed within the same graunte, then the same graunt shall be in his strengthe after the purpose of the same graunt, but in such case it behoueth, that the patron haue fee simple in the auoulo, for if he haue estate in the auoulon but for terme of life, or in tayle, then the graūt shalbe good but during his lyfe, and the lyfe of the persone that graunted it. &c.

¶ Also yf a man let land for terme of life which tenant for terme of lyfe chargeth the land with a rent in fee, and he in the reuercion confyrmeth the same graunt, this charge is good inough & effectuall.

¶ Also if there be a perpetual chauntry, wherof the ordinarie hathe nothynge to medle, nor to do, there the patrone of the chauntry, and the chapleyne of the same chauntry may charge the chauntry with a rent charge in perpetuitie.

Dedi et concelli.

¶ Also in some case these verbes, dedi et cōcelli, haue the same effect in substaūce and shal enure to the same entent, as this verbe confirmaui. As yf I be disseised of a plough lande, and after I make such a dede. &c. Sciant p̄sentes. &c. quod dedi to the disseysour the sayd plough land. & I delyuer all onely the dede to hym without lyuerye of seysyn of the land

this

Lay.9.

this is a good confyrmacyon, and as stronge in the lawe, as if he hadde in the dede this verbe confirmaui.

Also if I let lande to a man for terme of yeres, by force of which he is possessed and after I make to him a dede. &c. quod dedi & cōcessi. &c. ỳ same lande to haue for terme of his lyfe, & deliuer him his dede then by & by he hath estate i the land for terme of his life, & if I saye in the dede to haue and to holde to hym & to his heyres of his body engendred thē he hath estate in the taile, & if I say in the dede, to haue and to hold to him and to his heyres, thē he hath estate in fee symple, for thys shal enure to him by force of confirmaciō to enlarge his estate.

Also if a man be disseised, and the dysseisour dieth seised, and his heire is in by discent, and after the disseisee, & the heire of the disseisoure make ioyntly a dede of feoffemēt to an other in fee, and a liuerie of seisin vpon this is made, as to ỳ heire of the disseisour ỳ ensealeth the dede, the feoffemētes passe by ỳ same dede by waye of feoffemēt, & as to the disseisee that ensealeth the same dede, this shal not enure but by way of cōfirmacion, but if ỳ disseisee in this case bring a writte of entre in le per et cui, against ỳ aliene of the heir of the disseisoure, enquyre howe he shall

Cap.9.

pleade that dede against the demaunde
if by way of confyrmacion or not.&c.

¶ And knowe ye this my chyld, that it is
The vtilitie of pleadynge. one of the moste honourable, laudable, &
profitable thynges in oure lawe, to have
the science of wel pleadyng in actions re
alles and personals, and for this I com
playle the espeyall, to see thy courage and
care to learne that.&c.

¶ Also if there be lorde and tenaũt, & the
lorde confyrmeth the estate that ỹ tenant
hath in the tenemẽtes, yet the seignoury
holly abideth to ỹ lorde, as it was before.

¶ In ỹ same maner it is, yf a man have
a rẽt charge, or a cõmõ of pasture out of
a certaine lãd, & he confirme ỹ estate, that
the tenant hath in the lande, yet abydeth
to the confyrmer the rent charge.

¶ In the same maner it is, if a mã have
common of pasture in the lande of an o
ther, yf he confyrme the estate of the te
naunt of the lande, nothyng shal depart
frome hym of his common, but this not
withstandynge the common abydeth to
him as it was before. But if there be lord
and tenaunte, whiche tenaunt holdeth o
his lord by seruice of fealtie, and .xx.s. d
rente, yf the lorde by his dede confyrme
the estate of the tenant to hold by .xii.d. o
by a peny, or by an ob. in this case the te
nant is discharged of al other seruices, &

shall yelde nothynge to the lorde, but that Cap. 9.
that is comprised within the same confir-
macio, yet yf the lord wyll by the dede of
confirmacion, that the tenant in this case
ought to yelde to him an hauke, or a role,
yerely at suche a feast, &c. this confirma-
cion is voyd, for this that he reserueth to
hym a newe thyng that neuer was parcel
of the seruices before the confyrmacion,
and so the lord may abyde the seruices
by such confirmacion, but he may not re-
serue to hym a newe seruyce. &c.

Also if there be lorde, meane, & tenante
and the tenat is an abbot that holdeth of
the meane by certayn seruices yerely, the
which tenant hath no cause to haue acquy-
tance against his meane, for to bring a
writte of meane. &c. In this case yf the
meane confyrme the state that the abbot
hath in the lande to haue and to holde the
lande vnto hym, and to his successours in
frank almoigne, or free almesse. &c. in this
case this confirmacion is good, and then
the abbot holdeth of the meane in frankе
almoigne, and the cause is for this, that
no newe seruyce is reserued, for all the
seruyces specially specifyed be extynct.
and nothyng is reserued to the meane,
but the abbot shall holde of him the land
and that was before the cõfirmacion: for
he that holdeth in frãke almoigne ought

Cap.9. go do no bodely seruice, so that by such confirmacion it appeareth that the mesne shal reserue vnto hi no new seruice, but that the lande shalbe holden of him as it was before; and in this case the abbote shal haue a writ of mene, if he be distrayned in his defaut by force of the said confirmacion, where percase he might not haue such a writ before.&c.

¶ Also if I be seased of a villayne, as of a villayne in grosse, and an other taketh him out of my possessyon, claymyng him to be his villayne, where he had no right to haue him as his villayne, and after I confirme vnto him the estate ỳ he hath in my villayne, this confirmacio semeth voide, for this that none may haue possession of a man, as of a villayne in grosse, but he that hath right to haue him as his villaine in grosse. And thus in so much that he, to whom the confyrmacion was made, was not seised of him, as of ỳ villayne at the tyme of the confyrmacion, such confirmacion is voyde, but in this case if such wordes were in the dede, scilicet mededisse et concessisse tali.&c. tale villanum meum, this is good, but they shal enure by force and waye of graunt and not by way of confirmacion.&c.

¶ Also sometime these verbes dedi et concessi, enure by way of extinguishment

Cap.9.

he thyng gyuen or graũted. As if a tenãt holdeth of his lord by certaine rent, and the lord by his dede graunteth to the tenant, and to his heyres the rent. &c. this shal enure to ỹ tenãt by way of extinguishment, for by thy grant ỹ rẽt is extinct. &c. ¶ In ỹ same maner it is, where one hath a rent charge out of certaine lande, and he graũteth to the tenant of the lande the rent charge. &c. And the cause is for this, that it appeareth by the wordes of the graunte, that the wyll of the donoure is, that the tenaunte shall haue the rent. &c. and in so much that he myghte not haue nor perceyue any rente oute of his owne land, for this the dede shalbe vnderstande and taken for the most aduãtage and auayle of the tenant that may be, and that is by way of extinguishment.

¶ Also yf I lette lande to a manne for terme of yeres, and after I confirme his estate without mo wordes put i the dede by this he hath no greater estate, but for terme of yeres, as he had before, but if I relese to him my right that I haue in the lande without mo wordes: put in the dede he hath estate of franketenemẽte, and so mayst thou my child vnderstand dyuers great dyuersities betwene releasses and confirmacions.

¶ Also if I beynge within age let lande

Capi. 9.

to one for termie of xx. yeres, and after he graunteth ỹ lãd to an other for terme of x. yer: to ỹ graũt is but parcel of his terme in this case whẽ I am of ful age, yt I release vnto ỹ grauntee of my lessor, this release is voyde, for this that there is no priuitie betwene hym and me. &c. But if I cõfirme his estate, thẽ this confirmacion is good, but if my lessee graunt al his estate to another, then my release made to the grauntee is good and effectuall.

¶ Also if a man graũt a rent charge out of his lande to me other for termie of hys life, and after I cõfirme his estate in the lande rent, to haue and to hold to hym in fee taile, or in fee simple, this confirmacion is void, as to enlarging of his estate for this that he that confirmed had no reuercion in the rent. But if a man be seised in fee, of rent seruice, or of tẽt charge and he graunteth the rẽt to an other for terme of lyfe, and the tenaũt attorneth, and after he confirmethe the estate of the grantee in fee taile, or in fee simple, this confirmacion is good, as to enlarge hys estate, after the wordes of the dede of cõfirmacion, for this that he that cõfirmed the estate at the time of ỹ cõfirmacio, had the reuercion of the rent. &c. But in this case aforesayd, where a man graunethe a rent charge to an another for terme

of life, if he wyl that the grātee shal haue estate in the tayle or in fee, it behouethe him that the dede of the grant of the rent charge for terme of lyfe be surrendred or cancelled, and then to make a newe dede of such a rent charge, to haue and to take to the grauntee in the tayle, or in fee. &c. Et paucis dictis plurima intedere potes. Cap. 10.

¶ Attournement. Cap. x.

Attournement is, if there be lorde and tenant, & the lorde wyl graūt by his dede & seuice of his tenant to an other for time of yeres, or for terme of life, or in taile, or in fee, him behouethe that the tenant atturne to the grantee in the life of the grantour, by force and vertue of the grant, or otherwise the grāt is voide, & atturnemēt in none other thing in effect, but when the tenant hath harde of the graunt made by his lorde, that the same tenant by worde agree to the sayde graunt, as to saye to the grantee. I agree me to the graūt made you, or I am wel contente of the graunte made to you. &c. but the more common atturnement is to saye syr I atturne to you by force of the same graunte, or I become your tenaūt &c. or to delyuer vnto the grantee a penye or a halpeny, or a farthynge, by waye of attournement. &c.

¶ Also if the lord graūt the seruyce of his

tenaunt

Capi.10. tenant to a mā, & after by a dede, hering a later date, he grāteth the same seruices to an other, and the tenaunt atturneth to the seconde grauntee: nowe the seconde grauntee hath the seruyce, & though that after the tenant wyl atturne to the fyrste grauntee, this is clerely voyde. &c.

¶ Also if a man be seised of maner which maner is parcel in demesne, and parcel in seruyce, if he wil aliene such maner to an other, it behouethe that by force of the alienacion, that al the tenauntes that holde of the alyenour, as of his manour. &c. attourne to the alienee, or otherwyse the seruyces abyde contynuallye in the alienour, excepte tenantes at wil, for it nedeth not that the tenantes at wyll attourne vpon such alyenacion. &c. for this that the same landes and tenemētes that they holde at wyll, do passe to the alienee by force of suche alyenacyon.

¶ Also if there be lorde and tenaunt, and the tenant letteth the lande to a man for terme of lyfe, the remainder to an other in fee, yf the lorde graunte the seruyce to the tenaunt for terme of lyfe in fee, in this case the tenant for terme of life hath fee in the seruices, but seruices be put in suspence, during his life, but his heyres shal haue the seruyces after his death, & that case it nedeth not any attournement,

for

for by the acceptaunce of the dede of him that ought to attourne, this is attournement in him selfe. &c. but where ỳ tenant hath as great and high estate in the tenemites, as the lord hath in the seignoury in such case if the lorde graũt the seruice vnto the tenaunt in fee, this enureth by way of extinguishement, causa patet. Cap.10.

¶ Also yf there be lorde and tenaunte, and the tenaunt maketh a lease to one for terme of lyfe, or gyuethe the lande in the taile sauing the reuercyon vnto hym. &c. if the lorde in suche case graunt the seygnourye to an other, in this case it behoueth that he in the reuercyon attourne to the grauntee, and not to the tenaunt for terme of lyfe, for the tenant i the taile for this that he in the reuercion is tenaunte vnto the lord, and not the tenãt for terme of lyfe, nor the tenaunt in the tayle.

¶ In the same maner it is, where there is lorde, mesne, and tenant, and the lorde will graunte the seruyces of the mesne, thoughe that he make no mencyon of the mesne in his graũt, yet it behoueth ỳ the mesne attourne. &c. & not the tenant per anale. &c. for this ỳ the mesne is tenant to him. &c. But otherwyse it is, where certain land is charged of a rent charge, or a rent secke: for in such case if he ỳ hath ỳ rent charge graunt it to an other it behoueth

Cap. 10. neth ỳ the tenant of the frãke tenemẽt attourne to the grauntee, for that, that the franktenement is charged with the rente &c. and in the rente charge none auowry ought to be made vpon any persõ for the distresse taken. &c. but he shall auowe the takyng good and rightevous, as in lãdes or tenemẽtes so charged to a distresse. &c.

¶ Also if there be lorde and tenaunt, and the tenant let his tenementes to an other for terme of life, the remainder to an other in fee, and afterwarde the lorde graũteth the seruices to an other. &c. and the tenant for terme of life attourneth, this is good inough, for this that the tenant for terme of life, is tenant in this case to the lorde. &c. & he in the remaynder can not be called tenant to the lorde, as touchyng this entent, but after the deathe of the tenant for terme of life. Yet in this case yf he in the remainder vse without heyre, ỳ lorde shal haue the remainder by way of escheate for this ỳ thoughe the lorde in suche case shalbe constrained to auowe vpon the tenant for terme of lyfe. &c. yet al the hole tenement, as touchyng al the estates of the franktenement. or of the fee simple, or otherwise. &c. in such case they be togither holden of the lorde. &c. but not to make auowrie vpon thẽ altogither. M. 3. H. 6.

¶ Also if there be lorde and tenant, & the

tenant

tenant letteth the tenemētes to a womā for terme of lyfe, the remaynder ouer in fee, and the womā taketh a husband, and after the lorde graūteth the seruyces, &c. to the husbande and his heyres: in this case the seruice is put in suspense during the couerture. But yf the woman die, lyuyng the husbaude, the husband and his heyres shal haue the rente of them in the remainder, &c. And in this case it nedeth not to haue any attournement by worde, &c. for this is that ỹ husbande, which ought to attourne, acceptethe the dede of the graūt of the seruices, &c. the which acceptaunce is an atturnement in the lawe. Cap.10.

¶ In lyke maner it is, yf there be lorde and tenant, and the tenant taketh a wife and after the lorde graūteth the seruyces to the wyfe, and to her heyres, and the baron accepteth the dede: In this case after the deathe of her husbande, the wyfe and her heyres shall haue the seruices, &c. for by the acceptaunce of the dede by the barō, this is a good attournemēte, &c. albeit that durynge the couerture, the seruyces were put in suspence, &c.

¶ Also yf there be lorde and tenante, and the tenant graūteth the tenementes to a man for terme of his lyfe, the remaynder to an other in fee, yf the lorde graunte the the seruyces to the tenaunte for terme of

lyfe

Cap. 10. lyfe, in this case the tenaunt for terme of lyfe hath fee in ỹ seruices. But ỹ seruices be put in suspence duryng his lyfe. But yet the heyres of the tenaunt for terme of lyfe, shall haue the seruyces after his decease. &c. And in this case there nedeth no atturnement, for by the acceptance of the dede of him that ought to atturne &c. this is atturnement of it selfe. &c. But where the tenaunt hath as great estate in the tenementes, as the lorde hathe in the seygnourye, in suche case if the lorde graunte the seruyces to the tenaunte in fee, this shall enure by way of extinguishemente, Causa patet.

¶ Also if there be lord & tenaunt, and the tenãt maketh a lese to a man for terme of his life, sauing the reuercion to him self if the lord graũt the seignourie to the tenant for terme of life in fee, in this case it behoueth that he in the reuercõ atturne to the tenant for terme of lyfe by force of the same graũt, or otherwise the graũt is voide, for that, that he in the reuercion is tenant to the lord. &c. and yet he shall not holde of the tenaunt for terme of lyfe, duryng his lyfe, causa patet.

¶ Also if there be lorde and tenaunt, and the tenant holdeth of the lorde by twenty maner of seruices, and the lord graũteth his seignourie to an other, if the tenaunt

saye in dede any parcell, or do any of the seruices to ỳ grauntee, ỳ is a good atturnemẽt, of, and for al the seruices though that the tenaũtes entent was to atturne but of the same parcel, for this that the signorye is an hole thinge, though that there be diuers maner of seruices, that the tenanut ought to do. &c. Lap.10.

¶Also if there be lorde and tenaunt, and the tenaunt holdeth of the lorde by many maner of seruices, and the lorde grauntuth ỳ seruices to an other by fyne, if the graunt sue a Scire facias, out of ỳ same fine, for any parcell of the seruices, and hath iudgement to recouer, thys iudgement is a good attournemẽt in the lawe for al the seruices.

¶Also if the lord of a rent serupce, graũt the seruices vnto another, & the tenaunt atturneth by a peny, & after the graũtee dystrayneth for the rent behind, and the tenaunt to him maketh rescous: In this case the grauntee shall not haue assise of the rent, but he shall haue a writ of rescous, for that the gifte of the penye by the tenaunte was but by waye of atturnemente. But if the tenaunte had giuen vnto the graũtee the sayde penye, as parcel of the rent, or an halfepenye, or a farthing by way of seisyn of the rente, then this is a good atturnement, & also it is a

good

Cap.18. good seysyn to the grauntee of the rente, and then vpon such rescous the graunte shall haue assyse.&c.

¶Also yf there be many ioyntenaintes, whiche holde by certayne seruyces, and the lorde grauntethe vnto an other the seruyces, and one of the sayde ioyntenaūtes attorneth to the grantee, this is as good as yf all had attourned, for this that the seignourie is hole. Enquire.

¶Also yf a man lette tenementes for terme of yeres, by force of whiche lease the lessee is seased, and after the lessour graunteth by his dede the reuercīō to an other for terme of lyfe, or in tayle, or fee it behoueth in suche case that the tenant for terme of yeres attourne, or otherwise nothing passeth by such a grant by suche a dede. And if in this case the tenaunt for terme of yeres attourne to the graunte thē by and by passeth the franketenemēt to the grauntee by suche attournemente without any lyuere of seysyn.&c. for this that if any lyuere of seisin shal or nedeth to be made in such case, thē the tenant for terme of yeres shalbe at time of ỹ liuere of seisyn oute of his possessyon, whiche shulde be agaynst reason.

¶Also yf tenementes be let to a man for terme of life, or geuē in the taile sauing ỹ reuercion

reuercio, &c. if he in the reuercion graũte Cap. 10.
the reuercion to an other by his dede, it behoueth that the tenant of the lande atturne to ỹ grãtee in the lyfe of the grauntour, or otherwise the graunt is voyde.

¶ In the same maner it is, if land be gyuen in ỹ taile, or let vnto a mã for terme of life the remainder vnto an other in fee if he in the remainder wyl graũt his remaynder to an other. &c. if the tenaunt of the lande atturne in the lyfe of the grauntour, then the graunt of suche remaider is good, or otherwyse not.

¶ Also if lande be let to a man for terme of yers, ỹ remaider to an other for terme of lyfe, reseruing to the lessour a certaine rent by yere, and lyuere of seylin is made vpon this to the tenãt for terme of yeres yf he in the reuercion in such case grante his reuercyon to an other, &c. and the tenaũte that is in the remaynder after the terme of yeres atturneth, this is a good atturnemente, and he to whome the reuercyon is graunted by force of suche atturnement, shal distrayne the tenant for terme of yeres, for the rent due after such atturnemẽt though the tenaut for terme of yeres, neuer atturned vnto hym, & the cause is for this, that where the reuerciõ is dependant vpon the state of frankete-

nement, it sufficeth that the tenant of the

frankete-

Cap. 10.

franketenemēt atturne vpon such grant of reuerciō. &c. And it is to wyt, ỹ where a lease for terme of yeres, or for terme of life, or a gift in the tayle is made to any man, reseruing to suche a lessoure or donour certayn rent, if such a lessour or donour grant his reuerciō to another, and the tenant of the land atturneth the rent, passeth to the grantee though that in the dede of the graūt of reuercion, no mencion is made of the rente, for this that the rent is incident to the reuercion in such case and not Enconuerso. &c. for if a mā wil graūt the rent in such case vnto another, reseruinge to him the reuercyon of the lande, though the tenant attourne to the graūtee, this shalbe but a rēt seck. &c.

Dedi et concesse.

¶ Also if a man let lande vnto another for terme of lyfe, and after suche lease he confirmeth by a dede the estate of the tenāt for terme of life, the remainder to another in fee, and the tenante for terme of life accepteth the dede, then is ỹ remaynder in dede to him, to whom the remaynder was giuē or limitted by ỹ same dede for by ỹ acceptance of ỹ tenant for terme of life of the same dede this is agremente of him, and so an atturnemēt i law, but yet he in ỹ remainder shal haue none action of waste, nor other benefite by suche remainder, except he haue the same dede

his

his hande, by which the remainder was graunted vnto hym, and for this that in such case the tenant for terme of life wyl retaine to him the dede, to the entēt that he in the remainder shall haue no action of wast against him for this that he may not come to haue the possessiō of the dede &c. It shalbe good and a sure thig in such case for him in the remaīder, that a dede indēted be made by him, that wyl make ỹ confirmacion, and the remaynder ouer. &c. and that he that maketh suche confyrmacion, delyuer a part of the indēture to the tenant for terme of life, and the other part to him that hath the remaynder. &c. and than he by shewing of the part of the indenture may haue an action of wast against the tenant for terme of life, and al other aduauntage that he in the remaynder may haue in such case. Lap. 9.

¶ Also if two iointenantes be, which letteth land to an other for terme of lyfe, yelyng to them and to theyr heyres a certayne rent by yeare, in this case yf one of the two iointenantes in the reuercion release to the other ioyntenaunte in the same reuercion, this release is good, and he to whom the release is made, shal haue only the rent of the tenaunt for terme of life & shal only haue a writ of wast against hym, though he neuer atturned by force

Cap.10.

of such relese, and the cause is for the pri-
uitie that ones was betwene the tenante
for terme of life, & hym in the reuercyon.
¶ In the same maner, and for the same
cause it is, where a man letteth lande to
an other for terme of his lyfe, the remain-
der to an other for terme of his life, reser-
uing the reuercion to the lesloure, in this
case if he in the reuercion, release to him
in the remainder. &c. and to his heyres al
his ryghte. &c. then he in the remainder
hath a fee. &c. & shall haue a writ of waste
against the tenant for terme of life, with-
out any atturnement of hym. &c.
☞ Also if a lease be made for terme of
lyfe, the remainder vnto an other in tayle
the remainder ouer to the right heires of
the tenaunt for terme of life, in this case
if the tenant for terme of life, graunt his
remainder in fee, to an other by his dede,
this remainder by and by passethe by his
dede without any other attournemente,
and he remaineth tenant of the land, not
withstandinge the graunt. &c. For if any
ought to attourne in this case, it should be
the tenant for terme of lyfe. And it were
in vayne that he should attourne vpon his
owne graunt. &c.
☞ Also yf there be the lord and tenant
and the tenant holdeth of the lorde by cer-
taine rēt, and by knightes seruyce, if the
lord

lorde graūte the seruices of the tenant by Cap.10
fyne, the seruices be by and by in the grā-
tee by force of the fyne, but yet the lorde
may not distrain for any parcel of his ser
nices without atturnemēt. But if the te-
nant dye his heire beyng within age the
lord shal haue the ward of the body of the
heire, and of the lande. &c. howe be it that
he neuer attourned for this that the seig-
niorie was in the grauntee maintenant
by force of the fine. And also i some cases
if the tenant die without heyre, the lords
shall haue the tenancy by way of eschete.
¶ In the same maner it is if a mā graūt
the reuercion of his tenaunt for terme of
lyfe to an other by fine, the reuercion pas
seth anone to the grauntee by force of the
fine, but the grauntee shal neuer haue ac
tion of waste without attournemēte. &c.
But yet if the tenant of terme of life ali-
ene in fee, the grauntee may enter. &c. for
this ỳ the reuercion was in hym by force
of the fine, and such alienaciō was to his
disinheritaunce. But in this case where
the lord graunteth the seruices of his te-
nant by fine, if the tenant die, his heires
beyng of ful age, the grauntee by the fine
shal not haue the relese, nor neuer shal di
strain for the relefe, except there had ben
an atturnemēt of the tenant that died. &c.
Of such thynges that lyeth in distresse

Cap.10.

vpon the whiche a wrytte of Replegiare is saed.&c. a man ought to auowe the taking good and ryghtuous.&c. and there ought to be atturnement of the tenaunt, howe be it that the graunt of suche seruices be by fine. But to haue ward of lādes and tenemētes so holdē, durig ỳ nonage of the heire, or them to haue by way of eschete, there nedethe not any dystrelle.&c. but an entre in the land by force of ryght of the seignory, that the grauntee hath by force of ỳ fyne.&c. and so se the diuersitie. ¶ Also if there be lord, mesne, & tenant, & the mesne grāteth by fine the seruices of his tenante to an other in fee, & after the grantee dieth wout heire, now the seruyces of the mesnaltie shall cōe & be eschete to the lorde peramount by way of eschete if after the seruyces of ỳ mesnaltie be behind, in this case he ỳ is lord peramounte may distraine ỳ tenant, notwithstādinge that the tenant dyd yet neuer attourne, & the cause is for this, that the mesnaltye was in dede i the grantee by force of the fyne, and the lorde peramount myght auowe vpon the grauntee for this that he was his tenaunt in dede, all be it that he shall not be compelled.&c. but if the grantour in this case dye without heire in the tyme of the grauntee, then he shalbe compelled to auowe vpon the grauntee, and

also

also in so much that the lorde peramout Cxpl.i.
maye not clayme the mesnaltie, by force
of the graūt made by the fine leuied by ỹ
mesne, but by the vertue of the seygnou-
rye peramout, by way of eschete, he shall
auowe vpon the tenaunt for the seruices
that the mesne had. ⁊c. al be it that the te-
naunt dyd neuer yet attourne.

¶ In the same maner it is, where the re-
uercion of the tenant for terme of life is
graunted by fyne to an other in fee, and ỹ
grauntee dyeth after without heyre, nor
the lorde hathe the reuercyon by waye of
eschete. And if after the tenāt make waste,
he lorde shal haue a writte of waste a-
gaynste hym, notwithstandynge that he
neuer attourned, causa qua supra. But
where a mā claimeth by force of ỹ graūt
made by the fyne, that is to say, as heyre
to assygne. ⁊c. there he may not distrayne
nor auowe, nor haue action of waste. ⁊c.
without attournemente.

¶ Also in ancyente borroughes or cytyes
where tenementes within the same bo-
roughes or cities bene deuisable by testa
ment, by ỹ custome, ⁊ the vse. ⁊c. if in suche
roughe or cytie a man be seised of rent
rente, or of rēt charg, ⁊ he deuiseth such
rente or seruyce to an other by his testa-
ment, and dieth. ⁊c. in this case he to whō
ỹ deuyse is made, maye dystrayne the

Capi.80. tenant for the rent or the seruices behind how be it that the tenāt neuer atturned. ¶ In the same maner it is where a man letteth such tenementes dyuisables to another for terme of lyfe, or for terme of yeres, and deuyseth the reuercion by his testament to an other in fee, or in fee taile and dieth, and anon after that the tenant maketh wast, he to whom the deuise was made shal haue a writ of wast, how be it that the tenaunte neuer atturned, & the cause is for this, that the wyl of the deuysour made by the testament shalbe performed after the entēt of the deuisour, and so the effect of this lieth vpon the atturninge of the tenant. &c. thē percase the tenant would neuer atturne. &c. then the wyl of the deuisour shulde neuer be performed, and therefore the deuysee shall dystrayne or haue an action of waste. &c. without atturnement. ¶ For if a mā deuise such tenementes to an other by his testamēt, habēdū sibi imperpetuū, and dieth and the deuisee entreth, he hath a fee simple, causa qua supra. And yet if a dede of feoffemente were made to hym by the deuysour of the same tenement, habendum et tenendum sibi imperpetuū, if lyuere of seisin were neuer there vpō made he shal haue none estate but for terme of lyfe. &c. ¶ Also yf a mā seised of a manour whic

whiche is parcel i demesne, and parcel in seruices, & thereof be disseised, but the tenant which holdeth of the manour neuer atturneth to ỹ disseisour, in thỹ case, how be it that the disseisour dyeth seised. &c. & his heire is in by discent, yet may the disseisee distraine foꝛ the rent beyng behind & haue the seruice, but if the tenãt come to the disseisour, & say, we become your tenantes. &c. oꝛ otherwise atturne to hi. &c. and after the disseysoure dyeth seysed. &c. thẽ the disseisee may not distraine foꝛ the rent, foꝛ this ỹ al the maner descẽdeth to the heire of ỹ disseisour. But yf one holde of me by rent seruice, whiche is a seruice in grosse, & not by reasõ of my manour & an other that no right hathe, claimeth the same rent, and receiueth and taketh ỹ same rent of my tenant by coaction of distresse oꝛ by other foꝛme, and so disseyseth me by takynge of suche rente, how be it that suche a dysseysoure dye so seysed by suche takynge of the rent, yet after hys death I may wel dystrayne foꝛ the same rent beynge behynde, befoꝛe the death of the dysseysour, and after his death, & the cause is foꝛ this, that suche is not my disseisour but by electiõ at my wyl, foꝛ how be it that he toke the rente of my tenaunt yet I maye at all tymes dystrayne my tenant foꝛ the rent behynd. &c. so that it is Lapi. 10.

Capi.lxx. to me, but as I wyl suffre the tenaunt to be, by as muche space of tyme behynd of paymēt to me of the same rent: for ꝑ payment of my tenāt to an other, to whome he ne ought to paye, is no disseyslin to me nor shall not put me out of my rēt, without my wyll & electyon, for howbeit that I may haue assise against such a taker. &c. yet this is at my election if I wil take hi as my disseisour or not, so that suche discentes of rentes in grosse, ne putteth not out the lordes from theyr distresse, but ꝑ at eche tyme they may wel dystrayne for the rent behind. &c. And in this case if after the decesse of him that so wrongfully taketh the rent. I graunt by my deede the seruices to an other, & ꝑ tenant atturneth this is good ynoughe, and the seruyce by such grant and atturnement, incōtinent be in the grauntee. &c. But other wyse it is where the rent is parcel of ꝑ manour, and the dysseisour dieth seysed of the hole manour, as in the case aforesayde.

¶ Also if I be seised of a manour parcell in demesne, and parcell in seruyce, and I gyue certayne acres of lande, parcell of the demesne of ꝑ same maner to an other in the tayle, rendryng to me and to mine heyres, a certayne rente. &c. If in this case I be disseised of ꝑ manour, and al the tenantes atturne and paye their rētes to

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the diſſeiſour, and alſo the ſayd tenant in tayl pay the rēt by me reſerued to the diſſeiſour, and after the diſſeiſour dye ſeiſed &c. and his heire entreth, and is in by diſcente, yet in this I maye after well dyſtrayne the tenante in the tayle and his heyres, for the rente by me reſerued vpō the gyft, that is to ſay, for the rent beinge behynd, before the dyſcent of the heyre of the dyſſeyſour, & alſo for the rent, whiche chaunced to be behynde, after the ſame diſcente, notwithſtandynge the dyenge ſeiſed of the dyſſeyſour. &c. Cap. 16.

¶ And the cauſe is for this, that when a man giueth tenemētes to an other in the taile, ſauing the reuercyō to him, and he vpon the ſaid gift reſerueth to him a rent or other ſeruices, al the rent and ỳ ſeruyces be incident to the reuercion, and whē a man hath a reuercion he cā not be put out of his reuercyō by the dede of a ſtraūger, except that the tenaunt be put out of his ſtate and poſſeſſyon. &c. for as long as the tenant in the taile and his heyres contynew theyr poſſeſſiō by force of my gift ſo longe is the reuercyon in me and my heyres, and in ſo much thāt the rent and the ſeruyces reſerued vpon ſuch condycion, be incidente and dependant to the reuercion, who ſo euer hath the reuercion, hath the ſame rent and the ſeruices. &c.

Cap.10. ¶In the same maner it is, where I let parcel of ꝯ demesne of ꝯ maner, to an other for terme of life, or for terme of yere, rendring to me certayne rent. ꝛc. al be it that I am disseised of the maner. ꝛc. & the disseisoure dye. ꝛc. and his heyre is in by discent, yet I may distrayne for the rente behynde, notwithstandyng such dyscent. vt supra. For when a mā hath made such a gifte in the taile, or such a lease for terme of life, or for terme of yeres, of parcell of the demesne of a maner. ꝛc. sauing the reuercion to such donour or lessour. ꝛc. and afterward if he be disseised of ꝯ maner. ꝛc such reuercion after such disseisin is seuered of the maner in dede, al be it, it is not seuered in right. And so may ye se dyuersitie, where there is a maner, parcel in demesne, and parcel in seruices, the which seruices be parcel of the same maner, not incidente to any reuercyon. ꝛc. or where they be incident to a reuercyon. ꝛc.

¶Discontinuance. Cap. xi.

DIscōtinuance is an auncīēt worde in the lawe, and hath dyuers significatiōs. ꝛc. But as to one entent it hath such a signification, that is to saye, where a mā hath alieued to an other certayne landes or tenementes, and dyethe, and an other had ryght to haue the same landes or tenementes, but he may not en

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ter in them bycause of such alyenacio. &c. Cap.xi.

¶As yf an abbotte be seysed of certayne landes & tenementes in fee, & he alieneth the same landes and tenementes to an other in fee, or in fee tayle, or for terme of life, & the abbot dieth, his successour may not enter in the same landes or tenementes, howe be it that he haue ryght to haue them, as in the right of his house, but he is put to his actyon to recouer the same landes or tenementes, which is called a wryt De in gressu sine assensu capitult.

¶Also if a man be seysed of lande, as in the right of his wife. &c. & therof enfeoffeth an other. &c. and dyeth, the wyfe ne may not enter, but she is put vnto his action, the whiche is called Cui in vita. &c.

¶Also if the tenant in tayle of certayns lande, enfeoffe an other therof. &c. & hath issue & dieth. &c. his issue maye not enter in the land, howe be it that he hath right and title therto, but is put to his action, that is called. Fermedon in descender.

¶Also if there be tenant in the tayle and the reuercion is to the donour and to his heires, if the tenant make a feoffemēt. &c and dieth without issue, he in ỹ reuercion may not enter, but is put to his action of Formedone in the reuerter.

¶And in the same maner it is where the tenant in the taile of certaine land is seised

Cap. 10. sed, wherof the remainder is to an other in the taile, or to an other in fee, if the tenant in the taile alienethe in fee, or in fee tayle. &c. and after dyethe whithout issue, they in the remainder may not enter, but be put to theyr writ of Formedone in the remainder. &c. And for this that by force of such feoffement and suche alienacions in the cases aforesayde, and in other like cases, they which haue title and right after the death of such a feoffoure or alyenour, maye not enter, but be put to theyr actions vt su. therfore such feoffemētes & alienacions be called discontinuaunces. ¶ Also yf tenāt in the tayle be dysseysed and he releaseth by his dede to the disseysour and to his heires al the right that he hath in the same lande, this is no discontinuance, for this that nothyng of ryght passeth to the disseisour, but for terme of lyfe of the tenaunt in the tayle that made the release. &c. But by the feoffemente of tenaunt in the tayle a fee symple passethe by the same feoffemēt by force of a liuere of seisin. &c. but by force of a release nothynge passeth, but the right that he may lawfully and ryghtfully release withoute hurt or damage to other persons, whiche thereto haue righte after his decealle. &c. and so it is a greatte diuersitie betwene a feoffemente of the tenaunte in the taile

and

and a release made by the tenaunt in the tayle. But it is sayd, that if tenant in the tayle in this case release to the disseysour and byndeth him and his heyres, to warrantise. &c. and dyeth, and this warrante descendeth to his issue, then that is a discontinuance, bycause of the warrantee. &c. But if a man haue issue a son by hys wyfe, and his wyfe dyeth, and after he taketh an other wife, and the tenemētes be giuen to him and his second wyfe, and to the heires of their two bodyes engendred and they haue issue an other son, and the the second wife dieth, and after the tenāt in the tayle is disseised, and he releaseth the to his disseisour al his right. &c. and byndeth him and his heires vnto warrātise and dieth, this is no discōtinuance to the issue in the tayle by the second wyfe, but he maye well enter. &c. for this that the warrantie descended to his elder brother that his father had by his fyrst wyfe. &c. Lay. 10.

¶ In the same maner it is, where tenementes be discendable to the yonger son after the custome of borough Englyshe, which ben tailed. &c. and the tenante in ỹ tayle hath issue two sonnes, and is disseised, & he releseth to his disseysoure all his right wᵗ warrantise, & dyeth, the yonger son may enter vpon ỹ disseisour notwithstāding the warrantise, for this that the

warran-

Cap.11. warrantyse dyscendethe to the elder for for alway the warrantise discendethe.&c. to him that is heire by the common law.

¶ Also if an abbot be disseised, and he releaseth to the disseisour with warrãtise, this is no discõtinuance to his successour for this ỳ nothynge passeth by his release but ỳ right that he hath during the tyme that he is abbot, and this warrantise is expired by his prẏuacion, or by his death.

¶ Also if a man be seysed in ryght of his wife, and is disseised, and he releasethe.&c. with warrantie this is in discontinuãce to the wife, yf she survyue her husbande, but that she may enter.&c. causa patet.

¶ Also if tenaunt in the taile be seised of certaine lande, and he lettethe the same lande to an other for terme of yeares, by force of which lease the lessee is no possession, and after the tenaunt in the taile by his dede releseth al his right that he hath in the same land, to haue and to holde, to the lessee, and to his heyres for euer, this is no discõtinuance, but after the decease of the tenaunt in the tayle his issue may wel enter, for this that by suche release nothynge passeth but for terme of lyfe of the tenant in the taile.

¶ In the same maner it is, yf the tenant in the taile confirme ỳ estate of the lessee for terme of certaine yeares, to haue and to

hold to him and to his heires, this is a discontinuance, for this that nothynge passeth by suche confyrmacion, but the estate that the tenaũt in the tayle had for terme of his lyfe. &c. Cap. 11.

¶ Also if the tenãt in taile after such lease graunte the reuercyon in fee by his dede to an other, and wyll, that after the terme finished, that the same lãd remaine to the grauntee, and to his heyres for euer, and the tenant for terme of yeres attourneth this is no discontinuance. For such thinges which passe in suche cases fro the tenant in taile only by way of graunte, or by confyrmacyon, or by release, maye passe nothynge to make estate to hym, to whom the graunt, or confirmacion, or release is made, but only that, that the tenãt in the taile maye ryghtfully do, and that is but for terme of hys life. &c. For if I let land to a mã for terme of his life. &c. and the tenaunt for terme of life, let the same land to an other for terme of yeres. &c. & after my tenant for terme of lyfe graunt the reuercion to an other ī fee, and the tenãt for terme of yeres attorneth, in this case the graũtee hath not in the frank tenement estate, but for terme of the life of his grantour. &c. and I that am in the reuercion of the fee simple, maye not enter by force of the graũt of the reuercyõ made

by

Cap.10. by my tenaunt for terme of lyfe, for this that by ſuche graūte my reuercion is not diſcontinued, but alwayes it abydeth to me as it was before, notwithſtanding ſuch graunt of the reuercion made to the grantee, to hym and to his heires, &c. for this that nothynge paſſethe by force of ſuche graunte, but the eſtate that the grauntour hathe. &c.

¶ In the ſame maner it is, yf the tenant for terme of life by his dede conferme the eſtate of his leſſee for terme of yeares, to haue and to hold to him and to his heires or releaſe to his leſſee and his heires, yet the leſſee for terme of yeares hathe not eſtate but for terme of the lyfe of the tenāt for terme of lyfe. &c. But otherwyſe it is when a tenant for terme of life, maketh a feoffement in fee, for by ſuch feoffemēt the fee ſiple paſſeth. For tenāt for terme of yeres may make a feoffemēt in fee, and by his feoffemēt, the fee ſimple ſhal paſſe & yet he had not at the time of ỹ feoffemēt made, but only eſtate for terme of yeres.

¶ Alſo yf the tenaunt in tayle, graūt his lande to an other for terme of lyfe of the ſame tenant in taile, and lyuerie of ſeiſin to him is made. &c. and after by his dede releaſeth to the tenant and to his heyres, al the right that he hath in the ſame land in this caſe the eſtate of the tenant of the

lande

nde is not enlarged by force of such re- Cap.11.
ase, for this that when the tenant hathe
e estate in the land for terme of the life
f the tenant in taile, then he hath all the
ight that the tenant in taile might right
fully graunt or release, so that by such re
ase no right passeth, in so much that his
ight was gone before.

Also if tenaunte in the tayle by hys
ede graunt to an other al his estate that
e hath in the tenemētes intailed, to him
haue and to holde all his estate to the
ther, and to his heyres for euer, and de-
mereth to him seisin accordyng. In this
ase the tenant, to whome the alyenacion
as made, hath none other estate but for
erme of lyfe of the tenaunt in tayle. And
o it may wel be proued, that the tenaunt
n the tayle may not graunt ne alyene ne
ake any rightful estate of the frankete-
ement to an other person, but for terme
f his own life. &c. For if I giue certaine
and in the taile to a man, sauyng the re-
uercion to me, and after the tenant in the
ayle enfeoffeth an other i fee, the feoffee
athe no ryghte estate in the tenementes
or two causes. One is for that by suche
offement my reuercion is discontinued
hich is a wrong act, and not a rightful
ct. An other cause is, yf the tenaunt dye
nd his issue sueth a writ of Formedone

agaynst the feoffee, the wyt shal say, and
also the declaracion ỳ the feoffee wrong
fully hi defoyced. &c. Ergo if he of wron
hym defoyced. &c. he had no ryghte estat

☞ Also if lād be lette to a man foy terme
of his lyfe, the remaynder to an other i
taple, yf he in the remainder wyl graun
his remaider to an other i fee by hy dede
and the tenaunte foy terme of lyfe attu
nethe, this is no discontinuance of the
maynder.

¶ Also if a man hath rent seruice, oy rent
charge in tayle, and he graũteth the say
rent to an other in fee, and the tenant a
turneth, this is no discontinuance. &c.

¶ Also if a man be tenant in the taile, a
auouls in grosse, oy of cõmon in grosse
he by his dede wyl graunt the auouls
the common to an other in fee, this is n
discontinuance, foy in such cases ỳ gran
tee hath no estate but foy terme of lyfe
ỳ tenant in the taile, that made the gra
&c. Note wel that suche thinges, as pas
by way of graũt by dede, made in the co
tre without lyuere there. &c. such graun
maketh no discõtinuance, as in the case
afoyesayd oy in other lyke. &c. and how
it that such thinges be graũted in fee,
fyne leuyed in the kynges courte. &c. y
this maketh no discontinuance. &c.

¶ Also if I giue lande to an other in
tayl

tayle, and he letteth the same lande to an other for terme of yeres, and after the lessour graunteth the reuercio to an other in fee, & the tenant for terme of yeres attorneth to the graūtee, and the terme is expired during the life of the tenaūt in tayle, by the which the graūtee entreth, & after the tenant in taile hath issue and dieth, in this case this is no discōtinuance, notwithstandyng that the graunte was executed in the life of the tenaunt in taile, for this that at ỹ time of the lese made for terme of yeres, no new fee simple was reserued in the lessoure, but the reuercion abydeth in hym in the tayle, as it was before the lese made. But if the tenant i taile make a lease for terme of lyse of the lessee. &c. in this case the tenaunt in the tayle hath made a newe reuercyon of fee symple in hym, for this that when he made a lease for terme of lyse. &c. he dyscontynued the tayle by force of the same lease, and also he discontynued my reuercyon. &c. and it behoueth that the reuercio of the fee simple be in some person in suche case, and it may not be in me, which am donour, i so much that my reuercion is discōtinued, ergo it behōueth that the reuercio of the fee be in the tenant in the tayle, that discontynued my reuercyon by suche lease. &c. And yf in thys case the tenaunte

Cap. 11. In the taile, graunt by his dede the reuer cion in fee to an other, and the tenaunte for terme of lyfe atturneth. &c. and after the tenaunt for terme of life, dieth, liuing the tenaunt in the tayle, and the grantee of the reuercion entreth. &c. in the lyfe of the tenaũt in the tayle, then this is a discontinuance in fee, and if after ỹ tenante in the taile dieth, his issue may not enter, but he is put to his writte of Formedone, and ỹ cause is for this, that he that hathe the graunt of suche reuercion in fee simple, hathe the seisin and execution of the same landes and tenementes, to haue to hym and to his heyres in his demesne as of fee, in the lyfe of the tenant in taile. &c. And this is by force of the same graunte of the tenaunt in tayle. &c.

¶ In the same maner it shalbe, if in the case aforesaid, the tenaũt for terme of life after the atturnement of the graũtee had alienen in fee, and the graũte had entred by forfayture of his estate, and after the tenant in taile had dyed, this is a discontinuãce, causa qua supra. But in the case if tenant in taile, that graũted the reuercion. &c. dye, lyuinge the tenaũt for terme of lyfe, and after the tenaunt for terme of lyfe dieth, & after he to whome the reuercion was graunted, entreth. &c. then this is no discõtinuance, but ỹ the issue of the tenant

tenant in the tayle may wel enter vpō ỹ graūtee of the reuercīō, for this that the reuercīō ỹ the graūtee hath, was not executed in the life of the tenaūt in tayle. &c and so there is great diuersitie, whē the tenaūt i ỹ taile maketh a lease for terme of yeres, and wher he maketh a lease for terme of life, for ī the one case he hath reuercion in the tail, & in the other case he hath a reuercion in fee. For if land be giuen to a man & to his heires males of hȳ body engendred, the which hath issue. ii. sonnes, & the elder sō hath issue a doughter and dieth, & the tenāt in taile, maketh a lese for terme of yeres, & dieth, now the reuercion discendeth to the yonger sōne, for this that the reuercion was but only in the tayle, and the yonger son is heyre male. &c. but if the tenaunte in tayle had made a lease for terme of lyfe. &c. & dyed now the reuercion descēdeth to ỹ doughter of the eldest sonne, for this that the reuercion is in fee simple, & the doughter is heire generall. &c. Capt. 11.

Also if a man be seised in tayle of lādes tenisables by testament. &c. and he deuyseth this to an other in fee, and dieth, and the other ētreth. &c. this is no discōtynuāce for thȳ ỹ no discōtinuāce was made in the life of the tenaunt in the tayle. &c.

Also if lande be giuen in tayle, sa-

Capi.xx. nyng the reuercion to the donour, and after the tenant in taile by his dede enfeoffeth the donour in the same land, to haue and to holde to him and to his heyres for euer, and delyuereth to him seysyn accordynge. &c. this is no discontinuance, for this that none may discontinue the state in the taile, if that he do not dyscontynue the reuercion of him, which had it in the reuercion. &c. or in the remainder, yf any hath it in ỳ remīder. &c. And in so much that by such feoffemēt made to ỳ donour the reuercion then beynge in hym, his reuercion is not discontynued nor altered. &c. this feoffemēt is no discōtinuance. &c.

¶ In the same maner it is, where lāds be giuen to a man in taile, the remainder to an other in fee, and the tenant in taile enfeoffeth him, whiche is in the remaynder, to haue and to holde to him & to his heyres, this is no discontinuance, causa qua supra. &c.

¶ Also if an abbot haue a reuercyon or rent seruice, or rēt charge, and wil graūt one of thē to an other ī fee, and the tenāt attourneth. &c. this is no discōtynuance.

¶ In the same maner it is where an abbot is seysed of auoulon, or of suche thynges that passe by way of graunt without lyuere of seysin. &c.

¶ Also if there be grandfather, tenant in

the

taile, father and son, and the graunde Capi. ii.
her is dissesed by the father, and the fa
r maketh a feoffement in fee without
rrantise and dieth, and after the grād
her dieth, the son may wel enter vpon
feoffe, for this that this was no dis-
ntinuance, in so much that the father
as not seised by force of the tayle at the
me of ỹ feoffemēt. &c. but was seised i fee
ỹ dissesi made to ỹ graundfather. &c.
And it is to be knowen, that there be
me discōtinuances for terme of lyfe, as
tenaunt in taile make a leale for terme
life, sauynge the reuercyon to hym, as
nge as the reuercion is to the tenant in
ile, or his heyres, it is no discōtinuance
t duryng the life of the tenāt for terme
life. &c. And if such tenant in taile giue
e tenemētes to an other in taile sauing
e reuercion, then this is a dyscontynu-
nce durig ỹ second taile. &c. But where
e tenāt in taile maketh a lese for terme
yeres, or for terme of lyfe, the remain-
r to an other in fee, and delyuereth ly-
erie of seisin accordyng, this is dyscon-
inuance in fee, for this that the fee siple
alleth by force of the liuerie of seysin. &c.
nd it is to wit, that some suche disconti-
nuances be made vpon cōdicion. &c. and
r this that ỹ condicions be broke. &c. or
r other causes after ỹ course of the law

Capi.xx. such estates be defeted, thē be the dyscon-
tinuaūces defeted, and do not take awa
any man by force of thē from his entre
as if a husband be seised of certaine lan
in right of his wife, and maketh a feof
fement in fee upon condicion, and dyeth
if the heire after enter upon the feoffe fo
the condicion brokē, the entre of the wif
is lawful upon the heyre, for this that by
the entre of the heire, the discontinuance
is defeted, as it is adiudged.

¶ Also if a womā inherited, take an hus
bande which husbād is within age, and
the husbande maketh a feoffement in fe
of the tenementes of the wife, and dieth
it hath ben questioned if the wife may en
ter or not. And it semeth to some mē, that
the ētre of the wife after the death of her
husband shalbe leful in this case, for whē
the husband made such a feoffement. &c.
he might well enter not wythstandinge
such feoffemente durinｇe the couerture,
& he might not entre in his owne right
but in the right of his wife. &c. Ergo such
right that he had to entre in the righte of
his wife. &c. that righte of entre abideth
to the wife after his decease.

¶ And it hath ben sayde, that if two ioynt
tenantes beinge within age make a feof
tement in fee, and one of the childzen dy-
eth, and that other suruiueth, in so much

that

that both children might enter iointly in Cap.11
theyr lines, this righte of entre groweth
all to him that survyueth, and so he may
entre into the hole. &c. but the heire of the
husband that made the feoffement wyth
in age may not entre. &c. for this that no
right descendeth to suche an heire in the
cale aforesayd, for this that the husbande
had neuer any thinge but in the right of
his wyfe. &c. And also when a childe ma-
keth a feoffement being within age, this
shal neuer greue nor hurt him, but that
he may well entre. &c. for this shulde be
against reason, ỹ such a feoffement made
by him, that was not able to make such a
feoffement, shall greue or hurte another
to tolle them of their entrees. &c. And for
these causes it semeth to some, that after
the death of such an husbande so beinge
within age at the time of the feoffemente
&c. that his wife may wel enter. &c.

¶ Also if a woman inheritrice taketh
an husband, and hath issue a son, and the
husbande dieth, and she taketh an other
husbande, and that seconde husbande let-
teth the lande, that he hath in the ryghte
of his wife, to an other for terme of hys
lyfe, and after the wife dieth, and after
the tenaunt for terme of life surrendreth
his estate to the seconde husbande. &c. En-
quyre if the son of the wyfe may enter or

Cap.12. not in this case vpon the second husband durynge the life of the tenaunt for terme of lyfe.&c. But it is clere lawe, that after the death of the tenant for terme of lyfe, the sonne of the wyfe maye wel entre, for this that the discontynuaunce that was made all onely for terme of lyfe is determyned by the deathe of the same tenaunt for terme of lyfe.&c.

¶Also it is to be knowen, that an estate tailed, may not be discōtinued, but where he that made the discōtinuance was once seysed by force of the tayle, soo that it be not by reson of warrantie. As yf there be graundefather, father, and son, and the grandfather is tenant in taile, and is disseased by the father which is his son, and the father maketh a feoffement of thys without warrantie, and dieth, and after the graūdfather dieth, the son maye well enter vpon the feoffee, for thys that this is no discontinuance, in so much that the father was not seised by force of the taile at the time of the feoffement.&c. but was seised in fee, by the disseisin made to hys graundfather.&c.

¶Also yf tenante in tayle make a lease to an other for terme of lyfe, and the tenaunt in tayle hath issue and dyethe, and the reuercion descendeth to his issue, and after the issue graunteth the reuercion to

hym

him descended to an other in fee, and the tenant for terme of life attorneth. &c. and is seised in fee, in the life of the tenant, and afterward the issue in the taile hath issue a son, and dieth, it semethe that this is no discontinuaunce to the son, but that the son may enter. &c. for this that his father to whome the reuercyon of the fee simple descended. &c. had not at anye tyme anye thynge in the lande by force of the tayle. &c. For if a mā sealed in right of his wife let the same land to an other for terme of his lyfe, nowe is the reuercyon of the fee simple in the husbande. &c. and if the husband die, liuing the wife, and the tenante for terme of life, and the reuercion descendeth to the heyre of the husbande, and he grauntethe the reuercyon to an other in fee, and the tenant attourneth, and after the tenant for terme of lyfe dieth, and the grauntee of the reuercion entreth: in this case this is no discōtinuance to the wyfe but the wyfe maye wel enter vppon the grauntee. &c. for this that the grantoure had nothyng at the tyme of the graunt in the right of his wyfe, when he made the graūt of the reuercio. And thus it semeth thoughe that men whiche be inheritable by force of the tayle were neuer sealed by force of the same taile, that yet suche feoffementes or grauntes by theym made

Cap. II.

without

Cap. 11. wythout cause of warrantie, is no discontinuāce to their issues, after their decesse but that theyr issues maye well enter. &c. allthoughe that they whiche made suche grantes in their liues, were forbarred to enter by their owne dede. &c.

¶ And if tenaunt in tayle hath issue two sonnes, and the eldest dyspleyseth hys father, and maketh a feoffemēt in fee, without clause of warrantie, and dyeth without issue, and after the father dieth, ỹ yonger son may well enter vpon the feoffee, for this that the feoffemente of his elder brother can not be discontinued, for this that he was neuer seised by force of the tayle. ¶ For it semeth against reason, that by a matter in dede. &c. without clause of warrantie, that a man may discontinue a tayle. &c. whiche was neuer seysed by force of the same tayle.

¶ In the same maner it is if a mā make a lease for terme of life, the remainder to an other in tayle, and he in the remaynder dysseiseth the tenaunte for terme of lyfe, and maketh a feoffemente to an other in fee, and diethe, and after the tenaunte for terme of lyfe dyethe, it semeth in this case, that he in the reuertion may well entre vpon the feoffee, for this that he in the remainder, which made ỹ feoffement, was neuer seised in the tayle

by

by force of the same remainder. &c. Cap.xx.

¶ Also if there be lorde and tenant, and the tenaunt giueth the tenementes to an other in tayle, and after ỳ tenant in taile maketh a leale to a man for terme of lyfe &c. sauynge the reuercyon. &c. and after graũteth the reuercion to an other in fee, and the tenant for terme of life atturneth &c. and after the grantee of the reuercion dieth without heyre, now the same reuercion commethe to the lorde by way of eschete: If in this case the tenaut for terme of life dieth, and the lorde by force of hys eschete, entreth in the life of the tenaũt in taile, and after the tenaũt in taile diethe, it semeth in this case, that this is no discontinuance to the issue in the tayle, nor to him in the remainder, but that he may wel enter, for this that the lorde is in by way of eschete, and not by the tenaunt in the taile. &c. But it shuld be otherwise, if the reuercion had bene executed in the grauntee, in the lyfe of the tenaũt in the taile, for thẽ had the grauntee ben in the tenementes by the tenaũt in the taile. &c.

¶ Also if the persõ or vicare of a churche aliene certaine landes or tenementes parcel of his glebe. &c. to an other in fee, and dyeth, or resigneth. &c. his successour may wel enter, notwithstandyng suche alienacion, as it is sayde in An. 2. H. 4. termino

Michaelis

Cap.xv. Michaelis, quod sic incipit: Nota quod dictum fuit pro lege, ī a writ of accompt brought by the mayster of a colledge, a gaynste a chapleyne, that yf a person or vicar graūt certaine landes that is of the right of his church, to an other, and dieth or chaungeth, that his successour may enter. And I thynke that the cause is for this, that the person or vicar that is sealed. &c. as in the right of his church, hath no right of fee symple in the tenementes, and the right of the fee symple of this abydeth in anye other person. And for this cause his successour maye wel enter, notwithstandynge suche alienacion. &c. for a bishop may haue a writ of right of tenementes of the right of his bishoprich, for this that the ryght of fee symple abydethe in hi & his chapitē. And a dean may haue a writ of right. &c. for this that the ryght abydethe in hym and his chappter, and an abbotte maye haue a writte of ryghte for th? that the right abideth in him and in his couent. And a maister of an hospytall maye haue a writte of ryght, for this that the ryght abydeth in him, and in his cobzethzen. &c. Et sic de aliis in casibus consimilibus. &c. But a person or a vicar may not haue a writ of ryght. &c. but the hyghest writte that they maye haue is a writ De iuris utrū, the which is a great

Iuris utrū.

pose, that the ryghte of fee simple is not Cap. 11.
in them, nor in no other. &c. but the ryght
of fee simple is in abyance, that is to say,
all onely in the remembraunce, ertende-
ment, and consydera cyon of the lawe. &c. Fee simple in
for me semeth that such a thyng in such a abiance.
ryght, that is sayd in dyuers bokes to be
in abiance is as much to say in latin. s. ta
lis res vel tale rectum, que vel quod non
est in homine, ad tunc superstite, sed tan
tū modo est, et consistit in consideratione
et intelligenci leges. &c. et quidā alii dix-
erunt talem rem aut tale rectū fore ī nu-
bibus. &c. But I suppose that they vnder-
stande by these wordes in nubibus. &c. as
I haue sayde before.

¶ Also yf a personne of a churche dye,
nowe the franketenement of the glebe of
the personage is in no man, durynge the
tyme that the personage is voyde, but
is in abyance, that is to saye, in consydera
cyon and intellygence of the lawe tyll an
other be made person of the same church,
and immediately whē an other is made
personne, the franktenemente in dede is
in him as successoure.

¶ Also some men peraduenture wyll ar- Obiection.
gue and saye, that ī so much that the per-
sonne with the assente of the patrone and
ordynarye maye graunte a rente charge
oute of the glebe of his personage in fee,

and

Cap.11. and so charge the glebe of the persona perpetually, ergo they haue fee simple, two, or one of them hathe fee symple, the leaſt. &c. to this it may be aunſwer that it is a principle in the lawe, that euery lande there is a fee symple in ſom man, or els the fee simple is in abtãce. &c. And an other principle is, that euery lan of fee simple. &c. maye be charged with rent charge i fee, by one way or by an ther. &c. and when ſuch rent is graunte by the dede of the perſon, and the patron and the ordinarie in fee, none ſhall hau no preiudice or loſſe by force of ſuch gr but the grauntours i their liues and th heires of the patron, and ỹ ſucceſſours o the ordinarie after their deceales, & after ſuch charge, if the perſon dye, his ſucce ſour may not come to the ſayd church to be perſonne of the ſame churche by the lawe, but by preſentment of the patron, and admiſſion, and inſtytucyon of the or dynarye. &c. And for this cauſe it beho uethe that the ſucceſſour holde hym con tent and agreed with that which his pa tron and ordinarie lawefully haue don before. &c. But this is no proofe, that th fee ſimple. &c. is in the patrone and th ordinarie, or in anye of them. &c. but th cauſe that ſuche rente charge is good, i for this that they which had entrees. &c.

the sayde churche, that is to say, the pa Cap. lii.
on after the lawe tempozal, and the oz
narie after the lawe spiritual, were al
nted, oz parties vnto suche a charge. &c.
o thus semeth the very cause that such
he may be charged in perpetuitie.

Also yf tenaunte in tayle hathe issue
d is disseysed, and after by his dede he
releaseth al his right to the dysseisour, in
is case no ryght of tayle maye be in the
nant in taile, foz this that he hath rele
d all his right, and no right maye be in
e issue in the tayle, durynge the lyfe of
is father, and suche ryght of inherytãce
the taile, is not all vtterly expyzed by
ce of such release. &c. ergo it behoueth
hat such right abide in abiance. &c. vt su
a, during the lyfe of the tenant in taile
hich releassed. &c. and after his decease,
en is such right mayntenable in the is
e in dede. &c.

In the same maner it is, where tenant
taile grãteth al his estate to an other,
this case the grauntee hathe not estate
t foz terme of life of the tenant in taile,
nd the reuercio of the taile is not in the
nant in taile, foz this that he hath grãt
d all his estate of his ryght. &c. And yf
e tenaunt, to whome the graunte was
ade, make wast, the tenant in taile shal
ot haue a wzitte of wast, foz this that

Cap. xx. no reuercion is in hym, but the reuercio
and the inheritaunce of the tayle, durin
the lyfe of the tenant is in abiance, ỹ is
saye, onely in the remembrãce, consy
tacion, and intelligence of the lawe.

¶ Also if a bysshop aliene landes, whic
be partel of his bysshoprziche, & dieth, th
is a discõtinuãce to his succeſſour for
that he maye not entre, but is put to h
writ De ingreſſu ſine aſſensu capituli. &c.

¶ Also if a Deane aliene lande, parcel
his deanerie, and dyeth, his succeſſour
may not enter but he may haue a writ,
ingreſſu ſine aſſensu epiſcopi et capitu
&c. But if the deane and ỹ chapiter ha
land to them, and to theyr ſucceſſours i
commõ. &c. howe be it ỹ the deane ali
ſuch landes, his ſucceſſours may wel e
ter, for this that the franktetenement a
tyme of the alienacion was as wel in
chapiter, as in the deane. But where t
deane is ſole ſeiſed, as i right of h deane
then ſuch alienacion is a dyſcontinuan
to his ſucceſſour as it is afore ſayde.

¶ Also ſome men wyl argu and ſay, th
if an abbot & his couent be ſeiſed in the
demeſne as of fee, of certayne lande
them, and to their ſucceſſours. &c. and
abbot without aſſent of his couent, al
neth the ſame land vnto an other, and
eth, this is a diſcontinuaunce to his
ceſſour

ssours. ꝛc. and by the same reason they Cap. 18.
l say, that where a deane and a chapp-
r be seysed of certayne landes to them
to their successours, if the deane alien
he same landes. ꝛc. this shalbe a discon-
uãce to his successours, so that his suc
ssour may not enter. ꝛc. to this may be
swered, that there is great dyuersitye
twene the sayd two cases. For whē the
bot and the couent be seysed. ꝛc. yet yf
ey be disseised, the abbot shall haue as-
e in his owne name, without naminge
his couent. ꝛc. And if a man wyl sue a
ecipe quod reddat, of the same landes
hen they be in the handes of the abbot
d his couent, it behoueth, that such an
tion real be sued against the abbot one
without naminge of the couent. ꝛc. for
is that all they bene deade persons in
e lawe, saue only the abbot that is soue
ygne. ꝛc. and this is bycause of the so-
rayntie. ꝛc. for els he should be as one
the other monkes of the couent. ꝛc.
But the deane & the chappter be no deade
rsons in the lawe. ꝛc. For eche of them
y haue an actiõ by hi selfe in diuers ca
, & of such lãdes or tenementes, which
deane & chapiter haue in commõ. ꝛc.
they be disseised, the deane and ỹ chapi-
shal haue assise, & not the deane alone
and if an other wyl haue an actiõ real

Cap.11.

of such landes or tenementes against [illegible]
deane.&c.it behoueth hym to sue agai[nst]
the deane and chapiter,& not against [the]
deane alone.&c.and so appereth great [di]
uersytie betwene these two cases.&c.

¶Also if the maister of an hospital dis[con]
tinue certaine lande of his hospytall, [and]
successours maye not enter,but he is [put]
vnto his writ. De in gressu syne alien[a]
cõfratrũ et cõsororũ.&c.and al such [writ]
tes do plainely appeare i the register.&c.

¶Also yf lande be let to a man for term[e]
of hys lyfe,the remaynder to an other [in]
the tayle,sauynge the reuersyon to the
dyssesyour, and after he in the remay[n]
der dyssesythe the tenaunte for terme [of]
life,and maketh a feoffement to an other
in fee,and after dyeth without issue, and
the tenaunte for terme of lyfe dieth,it se[e]
meth in this case,that he in the reuersyon
may wel enter vpon the feoffee,for tho[ugh]
that he in the remaynder, that made the
feoffement,was neuer seised in the tayle
by force of the same remaynder.&c.

Remytter. Capi.xii.

REmitter is an aũcient terme i the
lawe,and it is where a man hath
two tytles to lãdes or tenemẽtes,
that is to saye,one of an elder tytle, and
an other of a latter tytle,& he commeth to
the lande by the latter tytle,yet the law

adiudgeth

Capi.12.

Remitter by reason of dis-cente.

...dgeth him to be in, by force of the el-
...tytle, for this that ỹ elder tytle is the
...e fare tytle, and the more worthy ty-
... and then when a man is iudged in by
...ce of the more elder tytle, this is vnto
... sayde, a remitter, for this that ỹ law
...ll adiudge hym to be in the lande, by
... elder tytle. As yf the tenaunte in the
...le dyscontynue the tayle, and after he
...leyse the his dyscontynue, and so dieth
...sed wherby the tenementes descend to
... issue or cousin inheritable by force of
... tayle, in this case, this is to him, to
...ome the tenementes descende which
...h ryght by force of the taile, & remitter
... the tayle, for that, that the lawe shall
... and adiudge hym to be in by force of
... tayle, which is his elder title, for if he
...lbe in by force of the dyscent, then the
...continue maye haue a writ of entre v-
...n the disseisin in the per against him, &
...couer the tenementes and hys dama-
...&c. But in so muche that he is in his
...mytter by force of the tayle, the tytle &
...e interest of the dyscontinue is all vtter
...e adnulled, and defeated. &c.

Also if tenant in the taile enfeoffe his
... or his cousin inheritable by force of
... tayle in fee, the whiche son or cousyn
... the tyme of the feoffemente is within
...e, and after the tenant i the taile diethe

Cap.12.

and he to whom the feoffemēt was m
is his heire by force of the tytle in ꝑ t
this is a remitter to the heire in the t
to whom the feoffement was made.
howe be it, that durynge the lyfe of th
naūt in the taile, that made the feoffem
such heyre shalbe auoudged in by force
the feoffement, yet after the deathe of
tenaūt in the taile, the heire shalbe av
ged in by force of the taile, &c. and not
force of the feoffemente, for thoughe th
suche an heire was of full age at the t
of the death of the tenaūt in the taile,
made the feoffemēt, this maketh no m
ter, yf the heyre were within age, at
tyme of the feoffement made to him. A
if such an heyre beynge within age at
tyme of the feoffement, commethe to
age, lyuing the tenaūt in tayle that m
the feoffemēt, and so being of full age,
chargeth by his dede the same land wi
a cōmon of pasture, or with a rēt charg
and after the tenaunt in the tayle dieth
now it semeth that the lād is discharg
of the common and of the rente, for th
that the heyre is in by an other estate
the lande, then he was at the tyme of th
charge made, in so much that he is in b
remptter by force of the tayle, and so th
estate that he had at the tyme of ꝑ charg
is vtterly defeated, &c.

Also

Also a principal cause is, why suche an heyre in the cases aforesaid, and other cases semblable shal be said in his remitter, for this, that there is no person agaynst whō that he may sue his writ of Formedone, for against him selfe he may not sue, ne he maye not sue against none other, for none other is tenāt in the frāketenemēt, and for that cause the lawe adiudged him in his remytter, that is to saye, in suche wyse, as if he had lawfully recouered the same lande agaynst an other. &c. Capt. 12.

Also if land be tayled to a man and his wyfe, and to the heyres of theyr two bodyes engendred, the whiche haue issue a doughter, and the wife dieth, and the husband taketh an other wife, and hath issue another doughter of his body, and discontinueth the tayle, and after he dyeseythe the discontinue, and so dieth seised, now the land descēdeth to the two doughters in this case, as to the elder doughter that is inherytable by force of the tayle, this is a remytter but of the halfe, and as to the other halfe, she is put to her action of Formedone against her sister. For ī this case the two systers be but tenauntes in parcenery but the tenaūtes in cōmon, for this ý they be in by dyuers titles. For the one sister is in, in her remitt by force of ý taile: as to that, ý vnto her belōgeth. And Tenaūtes, in commō by dis cente where as auncester dyed sooke seysed.

Capi.12. the other sister is in, as to that that belongethe to her in fee symple by the dyscente of her father. &c.

¶ In the same maner it is, yf the tenaũt in the tayle enfeoffe his heyre apparaunt in the tayle beynge the heyre within age, and an other toyntenaunt in fee, and the tenaunt in the tayle dyeth, now the heire in the tayle is in his remytter as to the halfe, and as to that other halfe he is put to his writ of formedone. &c.

¶ Also if tenant in the tayle enfeoffe his heire apparãt, the heyre being of ful age at time of the feoffement, and after the tenaũt in the taile dieth, this is no remitter to the heire, for this that it was his owne folye that he beynge of ful age would take suche feoffement. &c. But suche folye may not be adiudged in the heire beyng within age at the tyme of the feoffement. &c.

¶ Also if tenaunte in the tayle enfeoffe a woman in fee, and dyethe, and his issue within age taketh the same woman to wyfe, this is a remytter to the chylde, and the wyfe then hath nothinge for this that the housbande and the wyfe ben but one person in the lawe. And in that case the housbande maye not sue a writte of Formedone, but yf that he wyll sue against him selfe, the which shalbe inconuenient, and for that cause the law iudgeth

tho

the heire in his remytter, for this that no
ly may be arrected to hī beinge withyn
age at tyme of the spousels. &c. And if the
heyre be in his remytter by force of the
taple, it folowety by reaso, that the wyfe
hath nothing. &c. for in so much ỳ the hus-
band and the wyfe be but one person, the
land maye not be severed by halfes, and
for this cause the husbande is in hys re-
mitter of the hole. But otherwise it is, if
suche an heire be of ful age at tyme of the
spousels, for then the heyre hath nothing
but in the ryght of his wyfe. &c.

Cap.12.

¶ Also if a woman seised of certaine land
in fee taketh an husbande, the which alie
neth the same land to an other in fee, and
the alience lettethe the same lande of the
husbande and the wyfe, for terme of their
two lines, sauing the reuercion to the les
sour, & to his heires, in this case the wife
is in her remitter, and she is seised i dede
in her demeane as of fee, as she was be-
fore, for thys that the takynge of estate
shalbe adiuged in the law the dede of the
husbande and not the dede of the wyfe,
so that no folye maye be iudged in the
wyfe, that is couert in suche case. And in
this case the lessour hath nothyng in the
reuercion, for this that the wyfe is seised
in fee. &c. But in this case, if ỳ lessour wil
sue an action of wast agaynst ỳ husband

Remytter by
reason of the
lease i trosted.

and

Cap.12. and his wife, for this that the husbande hath made walk, ỹ husband may not bar the lessoure, for to shewe this that the taking of estate made vnto him, and to his wife, which maketh a remitter to ỹ wife for this that the housbande is stopped to saye this that is agaynst his feoffemente and his owne repryse of estate for terme of life to him and to his wife, and yet the lessour hath no reuerciõ, for this that the fee simple is in the wife. And thus a man maye se a matter in this case that a man shalbe stopped by a matter i dede though no wrytynge by dede indented, or otherwise, be therof made. But if in an action of walk, the husbande make defaut at the grãd distresse, and the wife prayeth to be receyued, and is receyued, she shall wel shewe all the matter, and howe she is in her remitter, and she shal barre the lessor of his action. &c. for in euery case that the wyfe is receyued for defaute of her husbãd, she shal pleade, and haue the same auauntage in pleading as she were a woman sole. &c. And howe be it that the alyenee made the lease to the husbande and his wife by dede endented, yet this is a remitter to the wife. And also thoughe the alyene yelded the same land to the husbãd and his wyfe by fyne for terme of theyr lyues, yet this is a remytter to the wife

Stoppel by a matter i dede.

Collusion aborted in the lawe.

for

for this that the wyfe couert that take the estate by fine, shall not be examined by the Iustyces.&c. Cap.12.

And heare note wel that when anye thynge shall passe fro the wyfe that is couert baro by force of a fyne, as if the husband and his wyfe make a continuance of ryght to an other.&c. or make a graūt or a surrendre to an other, or release by a fine to an other, et sic de similib⁹, where the ryghte of the wyfe passethe from the wyfe by force of the same fyne, the wyfe in al suche cases shalbe examyned before that the fine be accepted, for this ỳ suche fynes conclude suche wymes couerte forever.&c. But where nothing is moued in the fine, but al only that the husband and the wyfe take estate by force of the same fine, this shal conclude the wyfe, for this that in such case she shal neuer be examined.&c.

Also if tenaūte in the taile discontinue the taile, and hath yssue a doughter, and dyeth, and the doughter beyng of ful age taketh an husbande, and the discontinue maketh a lease of this to the housbande and his wyfe, for terme of theyr lyues, this is a remitter in dede to the wife, and the wife is in by force of the tayle. Cauſa qua supra.&c.

Also if lande be giuen to the husband &

his

Fol. 12. his wife, to haue and to hold to them and to the heires of their two bodies begotte, and after the husband alyeneth the lande in fee, and taketh againe an estate to him and to his wyfe for terme of theyr two liues; in this case thr is a remitter i deede to the husband and his wife maugre the husband: for it may not be a remytter in this case to the wyfe except it be a remytter to the husbande, for this that the husband and his wyfe be but one selfe person in the lawe, though that the husbande is stopped to claime. And for this, this is a remitter to him agaynst his alyenacyon, and his owne repriſel as it is afore sayde.

¶ Also if lande be giuen to a woman in the taile, the remaynder to an other in the tayle, the remaynder to the thyrde in the tayle, the remainder to the fourthe in fee and the wife taketh an husband, & the husband discontinueth the lande of the wyfe by this discontinuance all the remainders be discontinued. For if the wife dye without issue they in the remainder shal haue no remedie, but to sewe their writtes of Formedone in the remaynder, whē they come to their tyme. &c. But if after suche discontynuaunce, estate be made to the husband and hys wife, for terme of theyr two lynes, or for terme of an others lyfe, or an other estate, &c. for this that this is

a re-

a remytter to the wife. This is also a remytter to all them in the remaynder. &c. Cap.12.
for after this that the wyfe that is in her remytter dyeth without yssue, they in the remaynder maye enter. &c. without anye action or suite. &c. In the same maner it is of them, which haue the reuercyon after such tailes. &c.

¶ Also if a man let a house to a woman for terme of her life, sauyng the reuercio to the lessour, and after one sueth a faint and false action against the woman, and recouereth ỹ house agaīst her by defaut, so that the womā may haue against him a wrytte Quod ei deforciat, after the statute of westminster secunde. Cap. 4. now is the reuercion of ỹ lessour discōtynued, so that he maye haue no action of wast. But in this case if the womā take an husband, and he that recouereth lette the house to the husband and to his wife, for terme of theyr two lyues, there the wyfe is in her remytter by force of the fyrste lease. And yf the husbaude and the wyfe make wast, the first lessour shal haue agaynst them a wryt of wast for this, that in so muche that the wife is in her remitter, he is remitted to his reuercio. But it semeth in this case, if he that recouereth by the false action, wyl bryng an other writ of wast agaynst the husband and Remitter by reaso of a recouerie.

his

Cap.12. his wife, the husbande hathe no remedy agaist hi, but to make defaut at ỹ greate distresse. ⁊c. and to cause the wife to be receiued, and to plede the matter against ỹ seconde lessour, and to shewe that the action, by whiche he recouered, was false ⁊ fayned in the lawe, and so the wyfe maye barre hym. ⁊c.

¶ Also if the husband discontinue ỹ lande of his wife, ⁊ after taketh againe estate to him and to his wyfe, and to the third person for terme of their lines, or in fee, this is no remitter to the momã, but as to the moytie. And as for the other moytie it behoueth her after the death of her husbad to sue a wrytte of Cui in vita. ⁊c.

¶ Also yf the husbande discontinue the lande to his wyfe, and goeth ouer the see, and the discontinue letteth the same land to the woman for terme of her lyfe, and delinereth to her seisin, and after the husband commeth and agreeth to ỹ liuere of seisin, this is a remitter to the woman, ⁊ yet if the woman had ben sole at the time of the lease made to her, this shulde be to her a remitter, but i so much as she was couerte baron at the tyme of the lese and of the liuery of seisi made to her, though that she onely toke the lyuerye of seysyn, this was a remytter to her, bycause a woman couert shal be adiudged as an infãt

within

within age in suche case.&c. Enquyre in this case, if the husband when he cōmeth againe from beyond see, if he wil disagre to the lease and ouerte of seysyn made to his wyfe in his absence, yf this shall put the woman fro her remytter or not.&c. Lay.xx. Inquyre.

¶ Also yf the husbande dyscontynue the tenementes of his wyfe, and the dyscontynue is disseised, and after the disseisoure letteth the sayde tenementes to the husbande and his wyfe for terme of lyfe, this is a remitter to the wyfe: but if the husband and the wife were of couin and consent, that the disseisin shuld be made, then it is no remitter to the wyfe, bicause she is a disseisoresse. But yf the husbande were of couyne and consent to the disseysyn, and not the wife, thē such lease made to the wife is a remitter, bycause that no defaute was in the wyfe.

¶ Also if such a discontynue had made estate of freehold to the husband and to his wife by dede indēted vpon cōdicion. s. reseruing to the discōtinue a certayne rent, and for defaut of payment of the rēt a re entre, & bicause that the rent is behynde, the discōtinue entreth, then of this entre the womā shal haue assise of nouel disseisin after the death of the husband against the discontinue, bicause that the cōdicion was holly annulled, i so much as the woman

Cap.12. man was in her remitter, yet the husbã with his wife coulde not haue allise, bycause the husband is stopped. &c.

¶Also if the houlbande discontinue the tenemẽtes of his wife, and take the estate again to him for terme of his life, the remainder after his decealle to his wife for terme of her life, in this case this is no remitter to the wyfe, duryng the lyfe of her husband, because that duryng the lyfe of the husband, the wyfe hath nothing in ỹ freholde, but if in this case the wyfe ouerliue the husband, this is a remitter to the wife, bicause that a freeholde in lawe is fallen to her, mauger her wyll. And in so much that she can haue no action agaīſt none other person, and agaynſte her selfe she can haue no actiō, therefore she is in her remitter. For in th? case though that the woman enter not in the tenementes, yet a ſtrañger that hath cause to haue action, may sue his action agaynſte the woman of the same tenementes, bicause she is tenant in law, though she be not tenãt in dede, for tenaũt of franke tenement in dede is he, that yf he be dysseysed of his francke tenemente, he maye haue allise, but tenaũt of freholde in lawe before his entre in dede, shal haue no allise, and yf a mã seased in fee of certayne lãd hath issue a sonne, whiche takethe a wyfe, and the

father

father dyeth seysed, and after the son dy- capi.12.
eth, before any entre made by hym into ỹ
lande, the wyfe of the son shalbe endow-
ed in the lande, as is afore sayd in the cha
piter of releasses, and yet he had no frake
tenement in dede, but he had a fee and a
franketenemēt in lawe. And so note wel
that a Precipe quod reddat maye as wel
be mayntayned agaynste hym, that hath
franketenemente in lawe, as againste hi
that hath franketenement in dede.

¶ Also if tenaunte in the tayle haue issue
ii. sonnes of ful age, and he letteth the tay
led land to the elder son for terme of his
life, the remainder to the youger sone for
terme of his life, and after the tenaunt in
the tayle dyeth. In this case the elder son
is not in his remitter bicause that he toke
estate of his father, but if the elder sonne
dye without issue of his bodye, then this
is a remitter to ỹ youger brother bicause
he is heire in the taile, & a franketenemēt
in law is fallen upon him, by force of the
remaynder, and there is none, agaynste
whome he may sue his action. &c.

¶ In the same maner it is, where a man
is disseysed, and the disseysour dieth ther-
of seysed, and the tenemētes descende to
his heyre, and the heyre of the disseysour
maketh a lease to a manne of the sayde

Cap. 12. tenementes for terme of lyfe, the remainder to the diſſee for terme of lyfe, or in tayle, or in fee, and the tenaũt for terme of lyfe dyeth, nowe this is a remitter to the diſſeiſee. Cauſa qua ſupra.

¶ Alſo if tenaũt in the taile enfeoffe hys ſon, and an other by his dede of the tayled lande in fee, and lyuerye of ſeyſin is made to the other, according to the dede, and the ſonne not knowyng thereof, nor agreynge to the feoffement, and after he that toke the liuerie of ſeyſin dyethe, and the ſõne occupieth not the lãd, nor taketh any profyte of the lande, duringe the lyfe of his father, and after the father dyeth, now this is a remitter to ỹ ſonne, bicauſe that the freholde is fallen to hym by the ſuruiuour, and no defaulte was in hym bycauſe he neuer agreed. &c. in the lyfe of his father, and there is none agaynſt whom he may purſue his writ of formedone. &c. for yf a man be diſſeyſed of certayne land, and the diſſeyſour maketh a dede of feoffement, wherby he enfeoffeth B. C. and D. and the lyuerye of ſeyſin is made to B. and C. but D. was not at ỹ liuerie of ſeyſyn, nor neuer agreed to the feoffemente, nor neuer woulde take the profites. &c. and after B. and C. dye, and D. ouerlyueth them, & the diſſeyſee bringeth his writ vppon diſſeyſyn in the per

agaynſt

ainste the same D. he shal shew al the matter, & howe that he neuer agreed to ỹ ffement, and so he shall discharge him ise of damage, so that the demaundant all recouer no damage against him, ough ỹ he be tenaũt of frãketenemẽt of land. And yet the statute of Glocester .i. wyl that the disseisee shall recouer mages in a wrytte of Entre, grouded on the nouel disseisin against him that founde tenaunt. And this is a proofe in other case, that in so muche as the is in the taile commeth to the franketenemẽt, and not by his dede, nor by his atnemẽt, but after the death of his father, is a remitter to him, in so much that can not sue an action of Formedone against none other person. &c.

capi.12.

Also if an abbot aliene the land of hys use to an other in fee, and the aiyence by his dedes chargeth the land with a rẽt arge in fee, and after the alinee enfeoff the abbotte with licence to haue and holde to the abbotte and to his succesurs for euer, and after the abbot dyeth, and an other is chose and made abbotte. this case the abbot that is the succesure, and his couente be in theyr remitter, and shal holde the lande discharged, bycause that the same abbot can not sue any actyon of wrytte of entre sine

Cap. 12.

assensu capituli, of the same lādes against none other person.

¶ In the same maner it is, where a byshop, or a deane, or other such persones alien. &c. wout assent. &c. & the aliene chargeth the land. &c. and after the byshop taketh estate agayne of the sayd land by licence to him & to his successours, & after the byshop dyeth, his successour is in his remitter, as in right of his churche, and shal defete the charg &c. causa qua supra.

Fauxifier de rec, y defaute

¶ Also if a man sue a false action against the tenaunt in the tayle, as if a man wyll sue agaynst hym a wrytte of entre in the Post, supposing by his wryt, that the tenaunt in the tayle, had not his entre but by A. of B. that dysseised the graūdfather of the demaundant, and that is false, and he recouereth against the tenaunt in the tayle by defaut, and sueth execucion, and after the tenaunt in the tayle dyethe, his issue mai haue a writ of formedōe against him that recouered, and yf he wyll plede the recouere against the tenaunt in the tayle, the yssue maye saye, that the sayde A. of. B. dysseysed not the graūdfather of hym that recouered in the maner, as his wrytte supposethe, and so he shall falsifye his recouerye. Also suppose that this was true, that the sayde A. of. B. dysseysed the graundfather of the demaundant

that

that recouered, & that after the dysseisin, the demaũdant or is father, or his graũdfather by a dede had releſed to the tenaũt in the taile, al the right that he had in the lande. &c. and this notwithſtandynge he ſued his writ of entre in the poſt againſt the tenaunt in the tayle, in the maner as is aforeſayde, and the tenaũt in the taile pleadethe to him, that the ſayde A. of B. diſſeiſed not his graũdfather in the maner as his writ ſuppoſeth, and vpon this they be at iſſue, and the iſſue is found for the demaundant, whereby he hath iudgement to recouer: and ſueth execuciõ, and after the tenaũt in the tayle dieth, his iſſue may haue a writ of formedone againſt him that recouered. And if he wyl pleade the recouere by actyon tried againſt his father that was tenaunt in the tayle, thẽ he may ſhewe & plede the releaſe made to his father, and ſo the actyon that was ſued, was faynt in the lawe. &c. And it ſemeth that fait actiõ is as muche to ſaye in Engliſhe a fayned action, that is to ſaye, ſuche actyon, that thoughe the wordes of his wrytte be true, yet for certayne cauſes he hathe no cauſe nor tytle by the lawe to recouer by the ſame actiõ And falſe action is where the wordes of the wrytte be falſe, and in the two caſes aforeſayde, yf the caſe were ſuche, that

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Fauera de re collierer par fayute plede.

Faint action.

Falſe action.

after ſuche a recouere and execucio[n] th[e]
of made, the tenaunt in the tayle had [th]
ſeyſed hym that recouered, and there
dyed ſeyſed, whereby the lande alſo de
cended vnto his iſſue, thys is a tempte
vnto the iſſue, and the iſſue is in by lo[w]
of the tayle, & for that cauſe I haue p[ut]
theſe two caſes beforeſayde, to enfourm
the my ſonne, ỳ the iſſue in the tayle, b[y]
force of a diſcente made to him, after a r[e]
couere and execucyon made agaynſt h[im]
auncelter, may be as wel in his remitte[r]
as he ſhulde be by dyſſet made to him a[f]
ter a diſcõtinuance made by his aũcelt[er]
of the tayled landes by feoffement in f[ee]
countrey or otherwyſe. &c.

¶ Alſo in the ſame caſe aforeſayde, if th[e]
caſe were ſuche, that after this, that th[e]
demaundant had iudgemẽt to recouer a[g]
gaynſt the tenaunt in the tayle, and th[e]
ſame tenaunt i the tayle died before a[ny]
execucyon hadde agaynſte hym, wher[by]
the tenementes deſcende to his iſſue, a[nd]
he ỳ recouered, ſued a Scire facias ou[t]
of the iudgemente, to haue execucyon [of]
the iudgemẽt agaynſt the iſſue in ỳ tay[le]
the iſſue ſhal pleade the matter as befo[re]
is ſayde, and ſo ſhall proue that the rec[o]
uerye was falſe or faynte in the law, an[d]
ſo ſhall barre hym to haue execucyon o[f]
the Iudgement. &c.

Also if tenaunt in the taile discontinue the taile, and dieth, and his issue bringeth a writ of Formedone against the discontinuee beyng tenaũt of the freehold of the lande, and the discontinue pleadeth, that he is not tenãt, or otherwise disclaimethe in the tenaũcy, in this case the iugement shalbe, that the tenaũt go withoute day, and after suche iudgement the issue i the taile, that is demaundãt: may wel enter in the lande, notwithstandynge the discontinuance. And by such entre he shalbe adiudged i his remitter, and the cause is for this, that where any mã seweth a pcipe quod reddat, agaynst any tenaunt of freehold, in which action the demaundãt shal not recouer damages, & the tenaunt pleadethe nõ tenure, or otherwyse disclaymeth in the tenaũcie, the demaũdant maye not auerre his writ and saye, that he is tenaũt, as the writ suppositethe. And for that cause the demaũdant after that that iudgement is giuen, that the tenaũt shal go without daye may enter into the tenementes demaũded, the which shalbe as greate aduauntage to hym in the law as yf he hadde iudgemente to recouer a gaynste the tenaunte. And by suche entre he is in his remitter by force of the taile, but where the demaundaunte recouereth damages agaynst the tenaunt, then Capi. 12.

capi.12. in this case the demaundant may auer that he is tenaũt as the writ supposeth is for the aduauntage of the demaũdant for to recouer his damages, or els he shal not recouer his damages, the whiche damages be or were giuẽ hym by the lawe.

¶ Also yf a man be dysseysed, and the disseisour dye, his heire beyng i by discẽt, now the entre of the disseysee is taken away. And if the disseysee bryngе his writ of entree vpon the dysseisyn in the pe against the heyre, & the heyre disclaymeth in the tenaũcy. &c. the demaundant may auerre his writ, that he is tenaunt as the writ supposeth, yf he wyl, for to recouer his damages. But yet if he wyl leaue the auerremẽt. &c. he may lawfully enter into the land, bicause of the disclaymer, notwithstandyng that his entre before was taken away. And that was adiudged before my mayster syr Robert Danby, late chyfe Justice of the common place, and his companions. &c.

¶ Also where the entree of a man is lawful, though that he take estate to hym when he is of ful age for terme of lyfe, or in taile, or i fee, this is a remitter to hym yf such taking of estate be not by dede endented, or by matter of recorde, that shal conclude or estoppe hym. For if a mã be dysseysed and thereof taketh estate of the

dissei-

disseisour wout dede or by dede pol, this cap.xx.
is a good remytter to the disseysee. &c.
¶ Also if a man let lande for terme of life
to an other, the whiche alyeneth to an o-
ther i fee, and the alienour maketh estate
to the lessour, this is a remitter to the les-
sour, bycause his entre was lawfull. &c.
¶ Also if a man be disseysed, and the dis-
seisour letteth the land to the dysseysee by
dede poll, or without dede for terme of
yeares, wherby the disseisee entreth, this
entre is a remitter to the disseisee. For in
such case where the entre of a mā is law
full, and a lease is made to hym, thoughe
that he claime by wordes in the coūtrey
that he hathe estate by force of such lease
or saieth opēly, that he claimeth nothing
in the land, but by force of such lease, yet
this is a remitter to him, for such claime
in the coūtrey is nothig to purpose but,
if he claime in any courte of record, that
he hath estate but by force of such lease &
not otherwise, then he is concluded. &c.
¶ Also if two iointenaūtes seised of cer-
taine lād in fee, the one being of ful age, Estoppel
the other within age, be disseised, and the
disseysour dyethe seysed, and his issue en
treth, the one of the iointenauntes being
thē within age, and after that he cōmeth
to ful age, the heire of the dysseysour let-
teth the lande to the same iointenauntes
for

fo.17. for terme of theyr two lyues, this is a remitter as to the halfe to him that was in in age, bycause that he is seised of ꝑmoytie that belongeth to him in fee, bycause his entre was lawful. But the other ioint tenaunt hath in the other halfe but an estate for terme of hys lyfe by force of the lese bicause his entre was take away. &c.

¶ Warrantie. Cap. xiii.

IT is commonlye sayde, that there be thre maner of warranties, ẏ is to say, warrantie lineal, warrantie collateral, and warrantie that beginneth by disseisin. And it is to wit, that before the statute of Gloucester cap. 3. all warrantyes which descẽded to thẽ which were heyres to them that made the warrantye, were barres to the same heyres to demaunde any landes or tenementes agaynst those warranties, except the warranties that beganne by dysseysyn. For such warrantye was neuer barre to the heyre, bicause the warrantye began by wronge, that is to saye, by dysseysyn.

¶ Warrantie that beginneth by dysseisyn.

¶ Warrantye that begynneth by dysseisyn is in suche forme, as where there is father & sonne, and the sonne dothe purchase lande. &c. and letteth the same land to his father for terme of yeares, and the father by his dede thereof enfeoffethe an other in fee, and bindethe hym and hys heyres

heyres to warrantye: yf the father dye, wherby the warrantye descendeth to his sonne, this warrantie shal not barre the son for not withstandyng this warranty the sonne maye wel enter into the lande or haue an assyse against the alienee if he wyl, bycause the warrantie beganne by dyssesyn. For when the father that had no estate, but for terme of yeares, made a feoffement in fee, thys was a dyssesyn to his sonne of the franketenement, that then was in the sonne. cap.13.

¶ In the same maner it is, yf the son let vnto the father the lande to holde at wyl & after the father maketh a feoffement w̄ warrantie. &c. & as it is said of ỳ father so it may be said of euery other ancestor. &c.

¶ In ỳ same maner it is, if tenant by elegit, tenant by statute marchant, or tenāt by statute staple make a feoffement i fee w̄ warrantye. &c. thys shal not barre the heire that ought to haue the lād bycause that such warranties begin by dissesyn.

¶ Also if wardeine in chiualrie, or wardein i socage, make a feoffemēt in fee, or in fee taile, or for terme of life w̄ warrantie. &c. such warranties be no barr? to the heires, to whom the lande shal descende, bycause that they begyn by dissesyn.

¶ Also if the father and the son purchase certayne lādes or tenemētes, to haue and

to

cap.13. to holde to them ioyntly. &c. and after the father alyeneth the hole to an other, and byndeth hym and his heires to warranty &c. and after the father dyeth, this warrãtie shal not barre the sone of the moitie that belonged to hym of the same landes or tenementes, bycause that as to that moyte, that belonged to the sõne, the warrantie began by dyssesyn.

¶ Also if A. of B. be seised of a mese, & F. of G. that hath no right, entreth into the same mese, claimig to holde ẏ same mese to him and to his heyres, but the sayd A. of B. then is continually dwelling in the same mese, in this case the possessiõ of the franketenemẽt shalbe alway adiudged i A. of B. & not in F. of G. bycause that in such case, where two be in one mese or in other tenementes, and the one claymeth by one tytle, and the other by an other title, there the lawe shall adiudge hym in possession that hath ryght to haue the possession of the same tenemẽtes. But in the case aforesayde, ẏt F. of G. make a feoffemente to certayne barretours & extorcioners in the countrey for to haue maintenaũce of thẽ, to haue the same mese by a dede of feoffement wt warrantie, by force of which the sayde A. of B. dare not dwel i the same mese, but goethe out of ẏ same mese this warrantie begynneth by dissei

syn

lyn, bycause that suche a feoffement was cap.13.
cause that the sayde.A.of.B.forsoke the
pollellyon of the same mese.&c.

¶ And ye shal note, that where one hauing no right to enter in anothers tene- Maxime
mentes, doeth enter into the sayd tenemētes, & incontinent maketh a feoffemēt to other persons by his dede with warrantie and deliuereth to thē seisin, this warrantie beginneth by dilleisin, bicause that the dilleisin & the feoffement were made as it were at one tyme, and that this is lawe, ye may se in a plee. Anno. 31. E. 3. in a wrytte of Formedone in the reuercio.

¶ Warrantie lineal is where a man seised of certaine lande in fee maketh feoffe- Warrantie
ment by his dede to an other, and bideth lyneal
him and his heires to warrantye, & hath issue, and dieth, and the warrantie descēdeth to his issue, this is a lineal warrantie. And ỹ cause why this is a lineal warrantie is not bycause that the warrantie descendethe from the father to his heyre, but the cause is for this cause, that yf no suche dede with warrantie had bē made by the father, then the ryght of the tenemētes shuld descēd to the heire, & ỹ heire should conuey the discēt frō the father. &c

¶ For if there be father & sonne, and the sonne purchas tenemētes in fee, and ỹ father dilleiseth ỹ sonne thereof, & alieneth

it

pl.13. ſt to an other in fee by his dede, and by the ſame dede bideth him and his heires to warrant the ſame tenementes.&c. and the father dieth, nowe is the ſõne barred to haue the ſayde tenementes, for he may by no ſuite, nor by no other meane by the lawe haue the ſayde tenementes, bicauſe of the ſaid warrantie, for this is a collaterall warrantie, and yet the warrantye deſcended lineally from the father to the ſon. But bycauſe that if no ſuche dede wt warrantie had bē made, the ſon in no maner might conuey the title ẏ he hath ī the tenementes from his father to him, in ſo much that his father hadde no eſtate nor ryght in the tenementes, therefore ſuche warrantie is called collateral warrātie, in ſo much that he ẏ made the warrantie is collateral to the tytle of the tenemētes, and that is as muche to ſaye, that he, to whome the warrantye deſcended, coulde not conuey the tytle that he had in the tenementes by him that made the warrāti, ī cale ẏ no ſuch warrātie had bē made.

ollateral rrantie

¶ Alſo if there be graundfather, father and ſon, and the graundfather is dyſſeyſed, in whoſe poſſeſſyon the father releaſeth by his dede with warrantie.&c. and dyeth, and after the graundefather dieth, nowe is the ſon barred to haue the tenementes by the warrantye of hys father, and

and this is called lyneall warrantie, by reason. 33.
cause that if no suche warrātye had bene
made, the son mighte not haue conueyed
the ryght of the tenementes to hym, nor
shew how he is heire to the graūdfather
but by the meanes of the father.

¶ Also yf a man haue issue two sonnes,
and is dysseysed, and the elder son releaſ-
sethe to the dysseysoure by his dede with
warrātie. &c. & dieth without issue, and af-
ter the father dieth, this is a lineall war-
rantie to ỳ ponger son, bicause ỳ though
the elder son dyed in the lyfe of the father
yet by possibylitie he might be his heyre,
and he might conueye to hym the tytle of
the land by his elder brother, yf no suche
warrantie had ben made. For it mighte
be, that after the death of ỳ father the el-
der brother entred into the tenementes,
and died without issue, and then the yon-
ger son shal cōuey to him the title by his
elder brother. But in this case if the yon-
ger son release wᵗ warrantie to the disseí-
sour, & dieth wout issue, this is a collate-
ral warrantie to the eldest son, bycause ỳ
of such land as was to the father, ỳ elder
brother by no possibilitie might cōuey to
hi ỳ title by meane of the yōger brother.

¶ Also yf the tenaūt in the tayle haue is-
sue thre sonnes, and discontinue the taile
in fee, and the myddle sonne releyseth
by hys dede to the dyscontinuee, and

capi.12. bindeth him and his heires to warranty, and after the tenāt in the taile dyeth, and the myddle sone dieth without issue, now is the elder sone barred to haue any recouerye by a writte of Formedone, bicause that the warrantie of the myddle brother is collaterall to him, in so muche that he may by no maner cōuey to him by force of the taile, any discent by the myddle brothee, and therfore it is a collaterall warrantie. But in this case yf the elder brother dye without issue, now the younger brother maye wel haue a Formedone in the descēder, and recouered the same lād bicause that the warrantie of the myddle brother is lineal to the youngest brother, bicause it may be, that by possibilitie the middle brother might haue ben seased by force of the taile after the death of his elder brother, and then myght the youngest brother conuey his title of discent by the myddle brother. &c.

¶ Also if tenaūt in the taile discontynue the tayle, and hath issue, and dye, and the vncle of the issue release to the discontynue with warrantie. &c. and dyeth without issue, this is a collaterall warrantie to the issue in the tayle, bycause that the warrantye descendethe vppon the issue, whiche can not conueye hym selfe to the tayle, by meane of his vncle.

Also

¶ Also if the tenaũt in the tayle haue is- capi. 13.
sue two doughters and dieth, and the el-
der doughter entreth into ỹ hole, & ther of
maketh a feoffement in fee with warran
ty. &c. and after the elder doughter dyethe
without issue: in this case ỹ yõger dough
ter is barred as to the one moitie, and as
to ỹ other moitie she is not barred, for as
to the moitie that belongeth to her selfe,
she is barred, bicause that as to ỹ moytie
she can not conuey the diseẽt by ỹ meane
of her elder syster, and therfore as to that
moytie, this is a collateral warrãtie, but
as to the other moitie, which belonged to
her elder sister, the warrãtie is no barre
to the yonger sister, bicause that she may
conuey her discent, as to that moitie that
belonged to her elder syster, by meane of
the elder syster, and so as to that moytye
that belonged to the elder syster, the war
rantie is lineall to the yonger syster. &c.

¶ And note well, that as to him that de-
maundeth fee simple by anye of his aun-
cestors, he shalbe barred by a lineal war-
rantie, which descendeth vppon hym, ex-
cepte it be restrayned by some statute, yet
he that demaundeth fee tayle, by a wryt
of Formedone in the descender, shal not
be barred by a lyneall warrantie, except
he haue ynoughe by discent in fee simple
by the same auncestor, that made the

cap. 12. bindeth him and his heires to warranty, and after the tenãt in the taile dyeth, and the myddle sõne dieth without issue, now is the elder sõne barred to haue any recouerye by a writte of Formedone, bicause that the warrantie of the myddle brother is collaterall to him, in so muche that he may by no maner cõuey to him by force of the taile, any discent by the myddle brothee, and therfore it is a collaterall warrantie. But in this case yf the elder brother dye without issue, now the younger brother maye wel haue a Formedone in the descẽder, and recouered the same lãd bicause that the warrantie of the myddle brother is lineal to the yõugest brother, bicause it may be, that by possibilitie the middle brother might haue ben seased by force of the taile after the death of his elder brother, and then myght the yõugest brother conuey his title of discent by the myddle brother. &c.

¶ Also if tenaũt in the taile discontynue the tayle, and hath issue, and dye, and the vncle of the issue release to the dyscontynue with warrantie. &c. and dyeth without issue, this is a collaterall warrantie to the issue in the tayle, bycause that the warrantye descendethe vppon the issue, whiche can not conueye vym selfe to the tayle, by meane of his vncle.

Also

¶ Also if the tenaũt in the tayle haue is- capi. 13.
sue two doughters and dieth, and the el-
der doughter entreth into ỹ hole, & therof
maketh a feoffement in fee with warran
ty, &c. and after the elder doughter dyethe
without issue: in this case ỹ yõger dough
ter is barred as to the one moitie, and as
to ỹ other moitie she is not barred, for as
to the moitie that belongeth to her selfe,
she is barred, bicause that as to ỹ moytie
she can not conuey the dis͠eẽt by ỹ meane
of her elder syster, and therfore as to that
moytie, this is a collateral warrãtie, but
as to the other moitie, which belonged to
her elder sister, the warrãtie is no barre
to the yonger sister, bicause that she may
conuey her discent, as to that moitie that
belonged to her elder syster, by meane of
the elder syster, and so as to that moytye
that belonged to the elder syster, the war
rantie is lineall to the yonger syster. &c.

¶ And note well, that as to him that de-
maundeth fee simple by anye of his aun-
cestors, he shalbe barred by a lineal war-
rantie, which descendeth vppon hym, ex-
cepte it be restrayned by some statute, yet
he that demaundeth fee tayle, by a writ
of formedone in the descender, shal not
be barred by a lyneall warrantie, except
he haue ynoughe by discent in fee simple
by the same auncestor, that made the

Cap 13. warrantie. But a collaterall warrantie is a barre to him that demaundeth fee, & also to hym that demaundeth fee taple, without any other dyscent of fee symple, except in cases that be restrayned by the statutes, and other cases for certaine causes, as shalbe sayde hereafter.

¶ Also if lande be gyuen to a man, and to his heyres of his bodye begotten, the which taketh a wife, and haue issue a son betwene them, and the husband discontinueth the taile in fee, and dieth, & after the wyfe releaseth to the discontynue in fee with warranty. &c. and dieth, and the warrantie descendeth to the sone, this is a collateral warrantie, but if tenemētes be gyuen to the housbande and the wife, and to the heires of their two bodyes begotten, which haue issue a sonne, and the husbande discontinueth the taple, and dyeth, and after the wife releseth with warrantie & dieth, this warrantie is but a lineal warranty to the son, for the son shal not be barred in this case to sue his writte of Formedone, except he haue inough by discente in fee simple by his mother, bycause that their issue in a writte of forme done ought to cōuey to him the right as heire to his father, and to his mother of their .ii. bodies begottē by fourme of the gift. And so in such case the warrantie of

the

the father, & the warrantie of the mother be but as lineal warrãties to ỹ heire. &c. cap.13.

¶ And note wel that in euery case where a man demaũdeth tenementes i fee taile by a writte of Formedone, yf anye of the issuẽ in the taile had possessyon, or that hadde no possession, make a warrantye. &c. yf he that sueth the writte of Formedone, myghte by anye possibylitie by matter that mighte be in dede conuey to hym the ryghte by hym that made the warrantie by the fourme of the gyft. &c. this is a lineall warrantye and not collaterall. &c.

¶ Also yf a man haue issue thre sonnes, and he gyueth lande to the eldest sõne, to haue and to hold to him and to his heires of his body begotten, and for defaulte of suche issue, the remaynder to the myddle sõne, to him and to the heyres of his bodye begottẽ, and for defaut of such issue, the remaider to the yongest sõne, and to his heires of hys body begotten: in thys case yf the eldeste sonne dyscontynue the taile in fee, and dyed him and his heires to warrantie, and die without issue, this is a collaterall warrantie to the myddle son, and he shalbe barred to demaũde the same lande by force of the remaynder, by cause that the remainder is his tytle, and hys eldeste brother is collaterall to

Cap 13. that tytle, whiche beginneth by force of the remaynder.

¶ In the same maner it is, yt the myddle sonne hadde the same land by force of the remainder, bicause that his eldest brother made no dyscontynuance, but dyed without issue of his bodye, and after the myddle son maketh a discōtynuāce with warrantie. &c. & dieth without issue, this is a collateral warrantie to the yongest son, and also in this case if any of the said sonnes be disseised, and the father ỳ made the gyfte release to the dysseysour all his right. &c. with warrantie, this is a collateral warrantie to that son, upon whome the warrantie descēded, causa qua supra. And so note wel, that where a man that hathe collaterall tytle, and his father releasethe with warrantye, that is a collateral warrantye. &c.

¶ Also yf the Father geue lande to hys elder sonne, to haue and to holde, to him and the heyres males of his body begotten, the remaynder to the seconde son &c. if the eldest brother aliene in fee with warrantie. &c. and hath issue female, and dieth without issue male, this is not a collaterall warrantye to the seconde sonne, nor shall not barre hym of his action of Formedone in the remaynder, bycause that the warrantye descendethe to the doughter

doughter of the eldest son, and not to the second son. For euery warrantie that discendeth, descendeth to him that is heire vnto him, whiche made the warrãtie by the common lawe. &c. Capi. 13.

¶ Also if lande be giuen to a man, and to his heires males of his body begotte, and for defaut of such issue, ỳ remainder ther of to his heirs femals of hỹ body begotte, & after the donee in ỳ taile maketh a feoffement in fee, w warrãtie accordig, and hath issue a son and a doughter, & diethe, this warrãtie is but a lineal warrãtie to the son, to demaunde by writ of Formedone in the discender, and it is but lineall to the doughter, to demaunde the same lande by writte of Formedone in the remaider, if her brother dye without heyre male, bicause ỳ she claimeth as heire female of the bodye of her father begotte. But in this case if her brother in his lyfe releaseth to the discontynue. &c. with warrantie. &c. & after die without issue, this is a collateral warranty to the doughter bycause that she can not cõuey to her the right that she hath by force of the remainder by any meane of discente by her brother, for this, that the brother is collaterall to the tytle of his syster, and therfore his warrantie is collateral. &c.

¶ Also I haue harde saye, that in the

copi. 13. tyme of kyng Rychardethe second, there was a Justice of the common place dwelyng in kent, called Rykhyll, that had issue dyuers sonnes, and his entent was that his eldest son should haue certaine lãdes and tenementes to him and the heires of his body begotten, and for defaut of issue the remaynder to his seconde son. &c. and so to the thyrde son. &c. And bycause that he would that none of his sonnes shoulde alyene or make warrantye for to barre or to hurte the other that should be in the remaynder. &c. he caused to be made an indenture to such effect, this is to saye, that the landes and tenementes were gyuen to the eldest son vpon this condycyon, that if the eldest son aliened in fee, or in fee taile &c. or if any of his sõnes alyened. &c. that then theyr estate should cease, & should be voyde, and that then the sayd landes, and tenemẽtes immedyately should remayne to the seconde sonne, and to the heyres of his body begotten, and that vpõ the same condicyon. i. that yf the seconde sonne alyen. &c. that then his estate should ceasse, and that then the same landes and tenementes shoulde remayne to the thyrde sonne and to the heyres of hys bodye begotten, and so forth the remaynder to other of his sõnes, and liuere of seisi was made accordyng. But it semeth by reason

that

that al such remainders i ẏ forme before Capi.25.
layd be voyde, & of no value, and that for
thre causes. One cause is for this, ẏ euery
remaider, that beginneth by a dede, it be
goueth that the remainder be in him, to
whom the remaider is tayled by force of
the same dede, when the ſpuere of ſeyſyn
is made to him that hath the franketene-
ment, for in ſuche caſe the beyng and not
being of the remainder, is by liuere of ſei
ſin made to him, which ſhal haue ẏ frank
tenement, and ſuch remaynder was not
to the ſeconde ſon at the tyme of liuere of
ſeyſin, in the caſe before ſayde. &c. the ſe-
conde cauſe is if the firſt ſon aliene the te
nementes in fee, then is the franketene-
mēt and the fee ſimple in the alienee, and
in none other, and if the donour had any
reuercion by ſuch alienacion, the reuerci
on is diſcontinued, then thoughe that by
ſome reſō, it may be that ſuch remainder
ſhall begynne hys beynge and his grow-
wynge immediately after ſuche alyena-
cion made to a ſtraūger, that hath by the
ſame alyenacion franketenemet and fee
ſymple. And alſo if ſuch remaider ſhould
be good, then myght he enter vppon the
alyenee, where he had no maner of right
before the alyenacyon, whiche ſhulde be
inconuenyent. The thyrde cauſe is whē
the condycyon is ſuche, that yf the eldeſt

cap.13. ſon alyene.&c.that his eſtate ſhall ceaſſe, or ſhalbe voyde.&c.then after ſuche alyenacyon.&c.maye the donoure enter by force of ſuche condycyon,&c.as it ſemeth and ſo the donoure,or hys heyres in ſuch caſe ought moze ſooner to haue the land then the ſeconde ſonne that had no ryght befoze ſuche alyenacyon.&c. and ſo it ſemethe that ſuche remaynders in the caſe befozeſayde be voyde.&c.

¶Alſo at the common lawe befoze the ſtatute of Gloceſter.cap.3.yf tenaunte by the curteſie had aliened in fee with warrantye,after his deceaſe,this was a bar to the heire.&c.as it appeareth by the wozdes of ỳ ſame ſtatute.But it is remedied by the ſame ſtatute, that the warrantye of the tenaunte by the curteſye ſhalbe no barre to the heire,except he haue inough by diſcent by the tenaunt by the curteſy, foz befoze the ſaid eſtatute that was a collaterall warrantye to the heyze,bycauſe he coulde not conuey any tytle of dyſcent to the tenemẽtes by the curteſye,but only by his mother oz other of his aũceſters &c.& that is the cauſe why it was collaterall warrantye.But if a manne inherite take a wyfe,whiche haue iſſue a ſõne betwene them,and the father dieth,and the ſon entreth in the land and endoweth his mother,and after his mother alyenethe

that

that that ſhe hathe in her dower, to an o- cap.13.
ther in fee with warrantye accordynge,
and after dieth, and the warrantie deſce-
deth to the ſon, nowe the ſon ſhalbe bar-
red to demaunde the ſame lande, bycauſe
of the ſayd warrantye, bycauſe that ſuch
collateral warrantye of tenaunte in do-
wer is not remedied by any ſtatute. The
ſame lawe is where tenaunt for terme of
lyfe maketh an alyenacion with warran
tye. &c. and dyeth, and the warrantye deſ
cendeth to hym that had the reuercyō or
the remaynder. &c. they ſhalbe barred by
ſuche warrantye. &c.

Alſo in the ſaid caſe, if it ſo were, ẏ when
the tenaũt in dower alieneth. &c. ẏ heyre
was within age, & alſo at that tyme ẏ the
warrantie deſcended vpō him, he was wᵗ
in age, in this caſe the heyre maye after
enter vpon the alyene, notwithſtandinge
the warrantie deſcended. &c. bicauſe that
no laches ſhalbe adiudged in the heire wᵗ
in age, that he entred not vpō the alyenee,
in the lyfe of the tenaunt in dower, but if
the heyre was within age at the tyme of
the alyenacyon. &c. and after he came to
full age in the lyfe of the tenaunte in do-
wer, and ſo beynge of ful age he entred
not vpon the alyenee in the life of tenaũt
in dower, and after the tenaunt in dower
dieth. &c. there paduenture ẏ heire ſhalbe

cap.33. barred by suche warrantye, bycause it shalbe acompted his folye, that he beinge of ful age entred not in the lyfe of the tenaunt in dower.

¶Also it is spoken in the ende of the said estatute of Glocester, that speaketh of the alyenacyon with warrantie made by the tenaũt by the curtesie in such fourme. In the same maner the heire of the womã after the death of the father & mother shall not be barred of action, if he demaũd the heritage or the mariage of his mother by a writte of entre, that hys father alyened in the time of his mother, wherof no fine is leuied in the kinges courte. &c. And so by force of the same statute, if ỹ husbande of the wife alien the heritage or mariage of his wife in fee with warrantie. &c. by his dede in the coũtrey, this is clere lawe that this warrãtie shal not barre ỹ heire excepte he haue ynoughe by discent. &c. But the doubte is, if that the husbande alien ỹ heritage of his wife by fyne leuyed in the kinges court with warrantie. &c. if this shall barre the heire without anye dyscent in value. &c. And as to that I wyll saye heare certayne reasons, that I haue harde spoken in this matter. I harde my maister syr Rychard Newton late chiefe Justyce of the common place, saye ones in the same place, that suche warrantie

that

that the baron maketh by fyne leuied in the kynges courte, shall barre the heyre thoughe that he haue nothing by discent bycause the statute sayth, wherof no fine is leuyed in the kynges courte. And so by his other opinion this warrantie by fine &c. abydeth yet a collaterall warrantye, as it was at the common lawe not remedied by the sayd statute, bycause that the said estatute excepteth the alienacions by fyne with warrantye, and some other haue sayde, and yet say the contrary, and this is their proffe, that as by ỳ same chapiter of the sayde estatute, it is ordeyned, that the warrantie of ỳ tenaũt by the curtesy shal not barre ỳ heyre, except he haue ynoughe by dyscente &c. though that the tenaũt by ỳ curtesy leuie a fine of ỳ same landes with warrantie &c. as strõgly as he can, yet this warrantie shal not barre the heire, except he haue inough by discẽt &c. And I thinke ỳ this is a law, for this that they say, ỳ it should be incõuenyent to vnderstand the statute in such fourme that a man that hath nothing but in the ryght of his wyfe, may by fyne leuied by him selfe of the same tenementes that he hath but in the right of his wyfe w̃ warrãtie. &c. shal barre the heire of the said tenementes wõut any discent of fee simple &c. where the tenaũt by the curtesi cã not

cap. 13.

cap.13. do it. But they haue ſaid, that the ſtatute ſhalbe vnderſtand after the fourme, that is to ſay, where ỹ ſtatute ſpeaketh, where of no fyne is leuyed in the kynges court, that is to ſaye, wherof no lawful fyne is ryghtefullye leuyed in the ſame court of the kynge, and that is whereof no fine of the huſbande and his wyfe is leuyed in the kynges courte, for at the tyme of the making of the ſaid ſtatute euery eſtate of landes or tenementes that any mā or woman had, that ſhuld deſcende to his heyre was fee ſimple without condicion, or vpon certaine condicīō in dede or in law. And bicauſe that ſuche fyne then myght lawfully haue ben leuied by the huſband and his wife, and the heires of the houſbande warranted. &c. ſuche warrantye ſhoulde barre the heyre. &c.

¶ And ſo they ſay that this is the vnderſtandyng of the ſaid ſtatute, for if the huſbande and the wife made a feoffement in fee by dede in the countrey, the heyre after the deceaſſe of the huſbande and the wife, ſhal haue a writ of entre ſur cui in vita. &c. notwithſtandyng the warrantie of the huſbande. Then if no ſuch exception was made in the ſtatute of the fine leuied. &c. thē the heire ſhould haue ỹ writ of entre. &c. notwithſtandinge the fine leuied by the huſbād and the wife, bicauſe

that

that the wordes of the statute before the exception of the fyne leuyed, &c. be general. &c. that is to say, that the heyre of the woman after the death of the husband and the wyfe, shal not be barred of actiō, if he demaūde the herytage or the mariage of his mother by writ of entre, that his father aliened in the tyme of his mother. And so though the husband and the wyfe aliened by fyne, yet this is true, that the husband, aliened in the tyme of ỳ mother & thus it should be i the case of the statute except suche wordes were, that is to say, whereof no fyne is leuyed in the kynges court. And so they say, ỳ is to vnderstāde wherof no fine vp ỳ husbād & the wyfe is leuied in ỳ kynges court, ỳ which is law fully leuied in such case. For if ỳ iustices haue knowledge ỳ a man ỳ hath noth ig but in the right of his wyfe, wyll leuie a fine in his name onely, they wyl not nor ought not to take such fine to be leuied by the husband onely, without naminge the wife. &c. therfore enquyre of this matter. cap.13.

¶ Also it is to wyte, that in such wordes where the heyre demaūdeth the heritage or mariage of his mother, this worde or, is a disiunctiue, and is as much to say, if the heyre demaunde the herytage of hys mother, this is to bee vnderstande, the tenementes that his mother had in fee

simple

ca.1.13. simple by discente, or by purchase, or the heire demaūd the mariage of his mother, that is to say, the tenemētes ỹ were giuen vnto his mother in frākmariage

The effecte of this word defendemus in a dede. ¶ Also where it is moued in diuers dedes these wordes in latin. Ego et heredes mei. &c. warrantizabimꝰ et imperpetuū defendemus, it is to se what effecte hathe that worde defendemus, in suche dedes. And it semeth that it hathe not the effect of warrantise, nor comprehendeth anye cause of warrantise, for if it shoulde be so that it tokē effect or cause of warrantyse, then it shoulde be put in some fines leuied in the kynges courte. And it was neuer sene, that this worde defēdemus was in any fine but alonly this word warrantizabimus, by whiche it semeth, that this verbe warrantizo, maketh warrātie, and is the cause of warrātise, and none other worde in our lawe.

¶ Also if tenaūt in the tayle be seysed of tenementes deuysable by testamēt after the custome. &c. and the tenaunte in the taile alyeneth the tenementes to his brother in fee, and hath issue and dyeth, and after his brother deuysethe by hys testament, the same tenemētes to an other in fee, & bindeth him and his heyres to warrantise. &c. & dieth wout issue, it semeth that this warrantye shall not barre the

issue

ſſue in the tayle, if he wyl ſue his wrytte cap. 13.
of Formedone, becauſe that this warran
tie deſcendeth not to the iſſue i the tayle,
ſo much that the vncle of the iſſue was
not bounde by force of the ſame warran-
tie in his life. And the proſe of this, that
he could not warrant the land in his life
is, in ſo muche that the deuyſe could not
take any execucion or effect, but after his
deceaſe, and in ſo much that the vncle in
his life was not holde to warrantie, this
proueth that it maye not diſcend frō him
to the iſſue in the tayle. &c. for nothynge
may diſcende fro the āceſſer to his heire
but the ſame that was in the anceſſer.
Alſo a warranti may not go after the na
ture of tenemētes by the cuſtome. &c. but
only after the fourme of the commō law.
For if tenaūt in tatle be ſeiſed of tenemē
tes in borough he Englyſhe, where the
cuſtome is, that all tenementes within
the ſame borough oughte to deſcende to
the yongeſt ſonne, and he diſcontynueth
the ayle with warrantyſe. &c. and hathe
yſſue two ſonnes, and dyethe ſeyſed of
other landes and tenementes i the ſame
borough in fee ſymple, to the value or
more of the tenementes tayled. &c. yet
the yōgeſt ſon ſhal haue a writ of Forme
dame of the tenementes tayled, & ſhal not
be barred by the warrātiſe of his father,

Warrantie ſhall enſue the courſe of the commō lawe.

though

cap.13. though that inough to hym descended in
fee symple, fro the same father after the
custome. &c. for this that the warrantie
descendeth vpō the elder brother that is
in full life. &c. and not vpō the yōger son.
¶ In ỳ sāe maner it is of collateral war-
rantise made of suche tenementes where
the warrātise descendeth to the elder son
&c. this shal not barre the yonger son. &c.
¶ In the same maner it is of tenemētes
in the shyre of Kent, which be called Ga-
uelkynd, the which tenementes be depar-
table among the brethren. &c. after the cu-
stome. &c. if any such warrantie be made
by theyr aūcestors, suche warrantise de-
cendeth al only to the heyre, that is heire
by the cōmon law, and not al the heyres
whiche be heires of suche tenementes af-
ter the custome. &c. vt patet. T. 22. E. 4.
¶ Also if a tenaunte in tayle haue issue
two doughters by dyuers bentres, and
dyeth, and the doughters enter, and a
straunger disseyseth them of the same te-
nementes, and one of the doughters re-
leasethe by her dede to the dysseysoure all
her right, and bindeth her and her heyres
to warrātise, and dieth without issue: in
this case the sister that survyuethe maye
well enter, and put oute the dysseysour of
al the tenementes, for this that such war-
rantise is no discontynuance nor collā-
terall

eral warrantise to the lisser ẏ survyueth for this that they be of halfe bloud, & the one may not be heyre to the other after ẏ course of the common lawe. But other wyse it is where there be doughters of the tenaũt in the taile by one selfe venter. Also if tenaũt in the tayle let tenementes to an other for terme of his life, the remaynder to an other in fee, and the collaterall auncestor confyrmeth the estate of the tenaunt for terme of life, and bindeth him, & his heires to warrantise for terme of lyfe, of the tenaũt for terme of lyfe, and dieth, and the tenaũt i the taile hath issue and dieth: Nowe this issue is barred to aske the tenementes by wyrt of Formedone, durynge the lyfe of the tenaunt for terme of lyfe, bycause of the collaterall warrantie descended vpõ the issue in the taile. But after the decese of ẏ tenaũt for terme of lyfe, ẏ issue shal haue a Formedone. &c. and vpon this I haue harde a reso, that this case shal prone an other case that is to saye, if a man lette his lande to an other, to haue and to holde vnto hym and to his heyres for terme of an others lyfe, yf the lessee dyeth, ivuynge him to whose lyfe. &c. and a straunger entreth in the lande, that the heyre of the lessee maye put hym oute, for this that in the case nexte aforesayde, in so muche that a

Cap.83. man maye bynde hym and his heires to warraunt the tenaũt for terme of lyfe all onely, durynge the lyfe of the tenaũt for terme of lyfe, and that warrantise descẽdeth to the heyre of hym that made ỹ warrantyse, the which warrantyse is no warrauntyse of inheritaunce, but all onelye for terme of anothers life, by the same reason, where tenementes be let to a man to haue and to hold to him and to his heires for terme of an others lyfe, yf the father die, liuinge he to whose lyfe. &c. his heire shall haue the tenementes, lyuing him to whose life. &c. for they haue said ỹ if a mã graũt an annuitie to an other, to haue and to take to him and to his heires for terme of an others lyfe, yf the grauntee dye. &c. that after his heyre shall haue ỹ annuitie
Inquyre. durynge the lyfe of him, to whose lyfe. &c. Quere de illa materia.

¶ But wher such lease or graũt is made to a mã & his heires for terme of yeres, in this case the heyre of ỹ lessee or ỹ graũtee shal neuer haue, after ỹ death of ỹ lessee or the graũtee, that ỹ is so letten or graũted, for this that it is chatell real, and all chatels reals by the common lawe shall come to the executours of the graũtee or of the lessee, and not to the heyre. &c.

¶ Also in some case it may be, that howe be it that a collaterall warrauntyse be made

made in fee.&c. yet such warrantise may be defeted and adiented. Cap.13.

¶As if the tenaũt in the tayle, dyscontynue the tayle in fee, and the dyscontinue is disseised, and the brother of the tenaũt in the tayle releasse the by his dede to the disseisoure al his right.&c. wyth warrantise in fee, and dieth without issue, and the tenaunt in the tayle hath issue, and dieth, now the issue is barred of his action by force of the collateral warranties descendinge vpon him, but if after this the discontinue enter vppon the disseisoure, then may the heyre in the tayle haue his action of Formedon.&c. for this that the warrantie is aniented and defeted. For when the warrantise is made vnto a mã vpon any estate that he then had, if the estate be defeted, the warrantie is defeted Warrantie collateral.

¶In the same maner it is, if the discontinue make a feoffemẽt in fee, reseruing to him certayne rente, and for defaute of paymente a reentre.&c. and a collateral ancestor releaseth to the feoffee that hathe estate vpon condicion.&c. and dyeth without issue, though that the warrantise descende vppon the issue in the tayle, yet yf after the rente be behynd, and the discontinue entrethe into the lande.&c. then the issue in the tayle shal haue his recouerye by a writte of formedone, for this that

Cap.13. the warrantye collateral is defeted. And so if any such collateral warrãtise be pleded againste the issue in the tayle in hys action of Formedone, he maye shew the matter as it is aforesaid, howe the warrantye is defeted, and so he maye well maintaine his action.

¶ Also if tenãt in the taile make a feoffemente to his vncle, and after his vncle maketh a feoffement in fee wyth warrãtise. &c. to an other, and after the feoffee of the vncle enfeoffethe agayne the same vncle in fee, and after the vncle enfeffeth a straunger in fee, withoute warrantyse and dieth without issue, and the tenaunt in the tayle dyeth, if the issue in the tayle wil bringe his writ of Formedõ against the strauger that cõmeth in by feoffemẽt of the vncle, in this case the issue shal neuer be barred by the warrantie that was made by the vncle to ỳ said first feoffe of hꝭ vncle, for thꝭ ỳ the said warrãtise was defeted and aniented, for this ỳ the vncle toke againe to him as great estate of his said first feffee, to whõ the warrãtie was made, as the same feffee had of him. And the cause why the warrãtie is anẽted in this case is this, that is to saye, that if the warraniise were in his force, the the vncle shal warrante vnto him selfe, whiche may not be, but if ỳ feffee made estate to

the

the vncle for terme of lyfe, or in fee tayle Cap.
laufynge the reuerepon vnto him.&c. or
that he make a gyft in the tayle to the vn
cle, or a leafe for terme of life, the remain
der ouer.&c. in this cafe the warrantife is
not all vtterlye antented, but it is put in
fulpence, during the eftate that the vncle
hath, for after this, that the vncle is dead
without iffue, then he i the reuercion, or
he in the remaynder fhall barre the iffue
in the taile in his writ of formedone by
collaterall warrantyfe in fuche cafe.&c.
But otherwife it is, where the vncle had
as great eftate in the lande by the feoffee
to whō the warrantife was made, as the
feoffee had of him.&c. cauſa patet.&c.

¶ Alſo yf the vncle after fuche feoffe-
mente made with warrantyfe, or releafe
made by him with warrātyfe, be attaint
of felony, or outlawed of felony, fuch col-
laterall warrantye fhall not barre nor
greue the iffue in the tayle, for thys that
by the attaynder of felonye, the bloud is
corrupte betwene them.&c.

¶ Alſo yf tenaunte in the tayle be dyſ-
feyſed, and after maketh a deade of releſe
to the dyſſeyſour with warrantiſe in fee,
and after the tenāt in the tayle is atteint
or outlawed of felony, and hath iſſue and
dieth, in thy? caſe the iſſue in the taile may
enter vpon the dyſſeyſoure.

pl. 13. ¶ And the cause is for this, that nothing maketh discontynuance in this case but the warrantie, that could not discende to the issue in the tayle, for this y the bloude is corrupte betwene hym that made the warrantye and the issue in the tayle. For the warrauntyse alwaye abydeth at the common lawe, and the common lawe, is such, that when a man is outlawed or attaynt of felonye, which outlawrye is an attainder in the lawe, that the bloude betwene hym and his sonne, and all other which shuld be said his heires, is corrupt so that nothynge by dyscent may descend to any that may be sayd his heyre, by the common lawe. And the wyfe of suche a man, that is so attaynt of felony shal neuer be endowed in the tenementes of her husbande so attaynt.

¶ And the cause is for this, that men shuld more eschewe to do felonies. &c. but the issue in the tayle as to the tenemētes tayled, is not in such case barred, because he is inherited by force of the statute, and not by the course of the cōmon lawe. And therfore such attainder of his father, or of his auncestors in the tayle. &c. shal not put hym out of his ryght that he shulde haue by force of the tayle. &c.

¶ Also yf tenaunt in the tayle enfeoffee his uncle, the whiche enfeoffeth an other with

with warrantie. &c. if after the feoffe by his dede releafe to the vncle all maner of warranties, or al maner couenantes reals, or al maner of demaundes, by fuche releafe the warrantie is extincte. And if the warrantie in fuch cafe be pleaded againſte the heire in the taile that bryngeth his writte of Formedone, to barre, the heyre of his action, if the heyre haue and pleade the faide releafe. &c. he ſhall defete the plee in barre. &c. And many other cafes & matters be there, whereby a man may defeate warranties. Capi. 13.

¶ And it is to witte, that in the ſame maner as collateral warrantie may be defeted by matter in dede or in lawe, in the ſame maner may lineal warrantie be defeated. &c. For if the heire in the tayle bringe a writte of Formedone, and a lyneal warrantie of his auncefter, inherytable by force of the tayle, be pleaded againſt him, wythe that, that ynoughe to him is deſcēded of fee ſimple by the ſame auncefter, that made the warrantie, if ỹ heire that is demandant may adnul and defete the warranti, this ſuffiſeth to him for the diſcent of other tenementes of fee ſimple maketh nothinge to barre ỹ heire without warrantie. &c.

Finis.

Here beginneth the Table of this present boke.

NOwe haue I made for the my son three bookes. The first is of estate that men haue of lãdes or tenemẽtes, that is to saye

A tenaunt in fee simple. ca.i.fo.ii.
Tenaũt in fee tayle .cap.ii.fo.v.
Tenaunt in the tayle after possibilitie of issue extinct. ca.iii.fo.vii.
Tenaunt by the curtesy of Englande. Cap.iiii. folio.ix.
Tenaunt in dower. cap.v.fo.xo.
Tenaunt for terme of life.cap.vi.fo.xiii.
Tenaunt for terme of yeres.ca.vii.fo.xo
Tenaunt at will cap.viii.fo.xvi
Tenãt by copy of court rol.ca.ix.fo.xvii.
Tenaũt by the yarde ca.x.fol.xix.

The seconde boke.

Homage ca.i.fo.xx.
Fealtie. ca.ii.fol.xxi
Escuage ca.iii.fo.xxii.
Knightes seruice. ca.iiii.fol.xxiiii
Socage. ca.v.fo.xxviii.
Franke almoigne ca.vi.fo.xxxii
Homage ancestrel. ca.vii.fo.xxxv.
Graunde sergeantie. ca.viii.fo.xxxvii.
Petite sergeantye. ca.ix.fo.xxxix.

Tenure

Tenure in burgage. ca.x.fo.xc.
Tenure in villenage. ca.xi.fo.xli
Of thre maner af rentes, that is to saye, Rent service, rent charge, and rent secke ca.xii fo.l.

¶ And these two small bokes haue I made for the, for to vnderstand better certayne chappters of the auncient bookes of tenures.

¶ The third boke.

¶ Parceners by the common laiwe. cap.i fo.lvii
Parceners by the custome. cap.ii.fo.lxii.
Joyntenauntes. cap.iii.fo.lxv.
Tenauntes in common. cap.iiii.fo. lxix.
Estates vpon condicion. cap.v.fo.lxxvii
Discentes. ca.vi.fol.lxxxvii
Continual clayme. ca.vii.fo.C.iii.
Releasses. ca.viii.fo.C.vi.
Confirmacions cap.ix.fo.C.xvi
Attournement. ca.x.fo.C.xxii
Discontinuaunce. cap.xi.fo.C.xli.
Remitter. cap.xii.fo.C.lvi.
Warrantie, that is to say, warrātie line all, warrantie collateral, and warrantye that beginneth by disseisin. cap.xiii.fol. C.lxv.

¶ Here endeth the table.

And

And knowe thou my sonne, that I will not that thou beleue, that all that I haue sayd in the sayd bokes is lawe, for that wil I not take vpon me nor presume. But of those thinges that be not lawe, enquyre and learne of my wise maysters learned in the lawe. Notwithstandinge though that certaine thinges that be noted and specified in the sayd bokes be not lawe, yet such thinges shal make the more apte and able to vnderstand and learne the argumentes and the resons of the lawe. For by the argumentes and the resons in the law, a man maye more sooner come to the certaynte and to the knowledge of the law.

Lex plus laudatur,
Quando ratione probatur.

Ex. S. M.
7/23/14

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ANNO
M.D.L.VI.